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ENGLISH POLITICAL THOUGHT
1603–1660

VOL. I 1603–1644

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HISTORY OF POLITICAL THOUGHT
IN THE SIXTEENTH CENTURY

ENGLISH POLITICAL THOUGHT

1603 – 1660

by

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VOL. I

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PREFACE

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PART I

THE CONSTITUTIONAL CONFLICT TO 1629

I. THE KING

Chapter I

THE NATURE OF THE KING'S CLAIM

§ 1. PRELIMINARY

FROM the March of 1604, when James I met his first Parliament, to the assembly of the Long Parliament in November 1640, there was going on a conflict between irreconcilable views concerning the constitution of government in England. It was concerned with what had been and with what was and, necessarily, with what should be. But the struggle was as far as possible from taking place on the ground of first principles or of theories of the State in general. The battle was not even fought over any clearly formulated principle of constitutional law. To the end of this critical period the issues remained indefinite and only partially apprehended. In a long series of cases the King's claim, rightfully to do this or that particular thing, was disputed and denied. There was debate in Parliament and argument in courts of law and everywhere an increasing friction and irritation. But on neither side of the controversy was any general and governing principle definitely asserted and adopted.

Neither side presented its case clearly and fully; for neither side saw it whole. Talk of absolute prerogative on one side remained almost as ambiguous as talk of fundamental law on the other. The meaning of the latter peculiarly elusive term varied with the point of view of those who used it. Coke might mean one thing by it, and James I quite another. It might indeed be said that the whole controversy turned on just this question: What is the fundamental law of the English constitution? So it was that in using the term each side in turn begged the question.

What we have to deal with is not a clear statement of claim but a series of particular claims, argued or asserted on no common ground that was stated, and usually without reference one to another. The real nature alike of the King's claim and

of the counter-claim of the opposition, can be made out only by examining the implications of a series of actual disputes.

§ 2. JAMES I

At the outset, we come upon a fact which might seem, at first sight, to settle the question as to the nature, at least, of the King's claim, quite simply and quite decisively. For King James I himself, habitually, in speech and in print, used language that means, if it means anything, that he claimed for the King, as such, an inherent absolutism of power that could not be limited. But we must beware of taking King James too seriously. We have to consider what connexion existed between the actual action of the Crown and his view of kingship as a kind of theocracy. Was that action to any appreciable extent based on the theory expounded in the *Trew Law*? Were the Commons in fact fighting a claim to pure absolutism in the King personally? I think it can be shown that this was not the case.

It has been well and truly said that the utterances of James I, spoken and written, disconnected the King in idea from the law and custom of the realm and from the Houses of Parliament and so, even, from the commonwealth itself. His language implied that he was a High Commissioner sent from Above to rule the body politic, but hardly a member of that body. 'We at no time stand so high in our estate royal,' Henry VIII had declared, 'as in the time of Parliament, when we as head and you as members, are conjoined and knit together into one body politic.' To James there was no such conjunction. He stood, in his own eyes, outside and above all merely human institutions, and the rights and privileges of the Houses, and even their existence, were dependent on his mere grace and favour. This ideal separation of the King from the law and institutions of his kingdom is implied everywhere in his published writings and speeches.

Though his language is frequently ambiguous and not always consistent, it is certainly true that James verbally claimed for himself and all other kings an illimitable authority. The King, he declared, sits in the throne of God and it is something like blasphemy 'to dispute what a king can do or say that a king

cannot do this or that'.[1] In the *Trew Law of Free Monarchies*[2] he spoke of a King as 'making statutes and ordinances . . . without any advice of Parliament or estate' and suspending laws made in parliament 'upon causes known only unto him'.[3] Vaguely he claimed power of life and death over all his subjects.[4] Even while he declared that 'a good king will frame all his actions to be according to the law', he insisted that he was not strictly bound to do so.[5] If his language means anything it means that whatever be the law and custom of his country, the power of a King remains unlimited in spite of all legal limitations. The King may always do, not only whatever he thinks right, but also, at his peril, what he thinks wrong.

But it was, I think, of some practical importance that James could give no rational account of the faith that was in him. Royal authority was to him a mystery, not to be explained or argued about, but to be piously accepted with a 'mystical reverence'. 'That which concerns the mystery of the king's power', he declared, 'is not lawful to be disputed.'[6] But such phrases left his meaning mysterious. His words sounded formidable but were radically vague. It seems that people hardly understood his utterances and that they produced little but irritation.

Talk as he might, James could not actually disconnect himself from that law and custom of which the monarchy was part. To have substantiated his ideal claims would have involved a revolution. Those claims were so completely unrelated to English law and custom as to be almost irrelevant to the real issues. At every turn James was confronted by the common law and by the more or less completely established rights of the Houses of Parliament. In the everyday business of government, his action was bound either to conform or to be patently revolutionary. James was far too cautious to be a revolutionary.

There was actually little real connexion between his talk and

[1] Speech in Star Chamber, 1616. *Political Works of James I*, Harvard Press, ed. 1918, p. 333.

[2] Published in 1598 and reprinted in the complete edition of the King's writings, in 1616. I may refer the reader to my account of the book in *Political Thought in the Sixteenth Century*, 1928.

[3] *Trew Law*, *Works*, p. 62.

[4] See his speech in Parliament of March 21st, 1609. *Works*, p. 307. See also *Trew Law*, *Works*, p. 62.

[5] *Trew Law*, *Works*, p. 63.

[6] Letter to Abbot, 1606. In Wilkins' *Concilia*, iv, 405.

the positive claims that brought him into collision with the House of Commons. Those positive claims were based mainly on Tudor practice and precedent: that is on what could quite fairly be held as constitutional law. It is, indeed, logically possible to connect James's view of the mystery of royal authority with a theory of absolute prerogative that was in process of formulation. Yet that, strictly, was a legal theory. And James himself told the judges that the absolute prerogative of the crown was 'no subject for the tongue of a lawyer'.[1] Nor was his own language at all times consistent. Cowell in his *Interpreter* of 1607 had seemed to be claiming unlimited power for the King. In 1610, James suppressed the book and told the Houses that 'he did acknowledge that he had no power to make laws of himself or to exact any subsidies *de jure* without the consent of his three estates'.[2] It must have been difficult, after this admission, to take his grandiose pretensions seriously.

It remains true, for all that, that James's habitual language set him apart from and above the law and constitution of the monarchy. It is very hard to say what exactly was the impression produced. Certainly his attitude may well have strengthened an increasing tendency to think of 'Parliament' as consisting of two Houses, set, ideally, over against the Crown. And certainly it must have tended to make men distrustful of him and see in his positive claims more than appeared on the face of them. It is equally certain that his action as King was never at any time really based on the principles of the *Trew Law*, unless, perhaps, during a short period of blissful ignorance, before he had learned that England was not, in his sense, a free monarchy. The oracles of King James give no clue to the real nature of the Crown's claim. To discover what that was, we must examine the particular claims made and disputed and the manner of their presentation.

§ 3. CLAIMS POSITIVE AND PARTICULAR

James I began his reign with a claim to create disqualifications for election to the House of Commons and to enforce them through Chancery. It is well to notice that the claim to

[1] Speech in Star Chamber, June 20th 1616.
[2] Message to the Houses, March 8th 1610.

exclude from the House persons judged by the Chancellor 'to be of turbulent humours' was ominous of serious consequences, even though it might mean practically nothing for the moment. Faced with opposition from the House, the King proceeded to assert that its privileges were granted of his mere grace. The proposition was flatly denied, but, undeterred, he repeated it in 1621, with increased emphasis. He then promised that he would maintain the privileges of the House, 'derived from the grace and permission of our ancestors and us', so long as its members behaved nicely. Otherwise, he warned them, he might be forced 'to retrench them of their privileges'.[1] His language, both in 1604 and in 1621, is merely silly, if it did not imply that the privileges of the House could be refused or withdrawn at his discretion. Such an assertion might be supposed to imply or to proceed from nothing less than a claim to absolutism pure and simple. But Elizabeth had, on occasion, used language somewhat similar.

Perhaps the most profoundly important of all claims made and disputed under James I was the King's claim to legislate for the Church with the co-operation of Convocation only, without reference to Parliament. But the development of that claim is definitely a part of the history of the Church, and its importance is inseparable from developments of opinion within the Church itself. It can be adequately dealt with only in that connexion. Important also in view of possible consequences was the claim made, in 1611, to appoint special commissioners with authority to judge and punish by imprisonment, fine, or confiscation, without reference to the rules of common law. But this affair came speedily to nothing and may conveniently be considered elsewhere.[2] Far more attention, and far more overt resistance, was aroused by the King's claim to limit freedom of debate in Parliament at his discretion and by the claim to a right to impose customs duties by proclamation, without consent of the Houses. In 1610, James ordered the House of Commons not to debate his right to impose such duties. In 1621 he told the members of the House that they were not 'to meddle with anything concerning our government or deep matters of state', such as the proposed Spanish match. You

[1] Message of December 10th 1621.
[2] See under Francis Bacon.

meddle with things far above your reach', he added.[1] In these proceedings he was doing only what Elizabeth had done, though indeed not without protest.

The imposition of duties by proclamation led not only to protest in Parliament but to an important judgement in the Court of Exchequer. The judgement delivered by Chief Baron Fleming on Bate's case in 1606, was a first halting step towards the formulation of a theory of 'absolute' prerogative such as would cover and justify almost all the positive claims made and disputed down to 1640. That aspect of the judgement will be discussed later. Here I need only point out that Fleming's judgement was not based on any theory of divinely given authority. Talk about the King sitting in the throne of God had no meaning in the law courts. But it may also be noted here, that the language of Fleming's colleague, Clarke, on the subject of prerogative was completely vague. He was clear only on one point; and that point is only too simple. It is admitted that the King can close the ports of the kingdom alike to persons and goods: 'then by the same reason may he prohibit them on condition . . . that if they import such goods, that then they shall pay'.[2]

It is significant that the debates on the impositions in the House of Commons, in June 1610, were 'left almost entirely in the hands of the lawyers'.[3] The question was argued as one of law simply. Still more significant, I think, is the fact that both Bacon and Yelverton, in supporting the Crown's claim, repeated Clarke's contention and ignored Fleming's. James Whitelocke effectively replied that because the King may close the ports 'upon consideration of public good', it does not follow that he may take money to open them. In the conduct of the case for the Crown, both in court and in Parliament, there appeared a marked timidity and consequently a tendency to pedantic quibble.

The public language of Charles I differed markedly from that of James. From the King himself, at least, we hear no more of divinely conferred authority to do as he thinks fit. But the discard of James's verbal extravagancies made no real difference. The claims of the Crown, and the case for their

[1] Messages of December 3rd and December 10th.
[2] *State Trials*, vol. XI, ed. 1779. See also Prothero's *Documents*.
[3] Gardiner's *History*, 1883, vol. II, p. 75.

validity, remained exactly what they had been. And not only did Charles maintain the positive claims made by James, but practically he added to them.

The imposition of the forced loan of 1627 involved a claim, the exact nature of which was, and remains, somewhat obscure, though its practical importance was evident. The proceeding had no real precedent nearer than Henry VIII. The King claimed a right, which could not in law be denied, to adopt a foreign policy strongly disapproved of by Parliament. Charles, in 1627, was claiming a right to compel the country to pay for that policy, whether money had been granted for that purpose or not. To call the levy a loan was but a very thin pretence, since it was evident that such a loan could be repaid only out of a special and additional Parliamentary grant. Possibly the government wished to avoid seeming to claim power to levy a general tax of its own authority, even in time of presumed emergency. But, at the least, it was claiming a right to force the hand of Parliament by forestalling a grant. The difference seems, practically, to be inconsiderable. We may put it that the King was claiming to impose, of his sole authority, a general and direct tax, whenever circumstances seemed to him to make it imperative that he should do so. He was, perhaps, claiming more than that: but he certainly was claiming that much.

The attempt to enforce payment of the loan led, necessarily, to an emphatic formal assertion of the old claim of the Crown to imprison people without showing cause, per *speciale mandatum domini regis*. In what is called Darnel's case, the case for the Crown was argued on grounds of law and political expediency simply. It was asserted, as a principle of law, that in such cases, no cause for the imprisonment being shown, it must be assumed that cause sufficient exists unrevealed. That principle was supported by precedents and by reference to the declaration of the judges in 1591. Attorney-General Heath admitted that wrong might, by such imprisonments, be done; but he argued that if they were made impossible, the whole commonwealth might suffer. Finally, the judges held, as it seems the precedents bound them to hold, that the special order of the King was prima facie evidence of a good cause for commitment. But they did not admit that the Crown could refuse to show cause

for an indefinite length of time. The victory was incomplete. But the point I wish to make is that neither argument for the Crown nor the judgement of the court was based on any theory of absolute prerogative, mysterious or other.

The claim of the Crown to a right to commit Members of Parliament to prison for action taken or words spoken in the House, was a logical derivative from the claim to restrict and condition debate. It had been acted upon by Elizabeth on several occasions. James I made little practical use of it, but he asserted the claim very distinctly. 'We think ourself very free and able', he informed the House of Commons in 1621, 'to punish any man's misdemeanours in parliament, as well during their sitting as after.'[1] Charles, when his turn came, actually did both, the first in 1626 and the second in 1629: exhibiting in the case of Eliot an obstinate vindictiveness such as Elizabeth had never indulged. It was in 1629 that parliamentary deadlock was reached, and the first ship-money writs were issued in 1634. Pressure of pirates and danger from the Dutch had made it in the highest degree desirable that strong fleets should every year be put in commission in the Channel. It was no case of false pretences: the money raised was spent, or wasted, or stolen, by the officers of the navy. But the later extension of the levy to the whole country involved the imposition, year by year, of an arbitrary general tax. Whatever case could be made out in law for the original levy, there was no strictly and simply legal ground for the form it finally took. The King was claiming a right to impose general taxation on grounds of public danger and emergency, and he alone was to judge of their validity. He was, perhaps, claiming no more than was logically involved in the forced loan of 1627. But the case came to be argued in the law courts and legal justification, in some sense, had to be found. The grounds of the judgement in Hampden's case need to be closely examined.

§4. A CONCLUSION

What then is it that, having regard to the manner in which they were advanced and supported, is implied in all these particular claims? No one at the time generalized clearly the

[1] Message of December 3rd.

implications of the King's action. Yet it seems that the main implication is clear enough.

What was implied was certainly not a claim to what we call absolutism: not even to such a restricted absolutism as Bodin had expounded. All the claims made could, indeed, have been very simply defended by reference to James I's theory of his own position. That they were not so defended, that they were advanced and defended on grounds of law, of precedent and of expediency seems to me decisive. Only when the King is personally stating his own claim, as when James claims, at least by implication, power to deprive the House of Commons of its privileges, is any connexion visible between his claim and his theories. When the King's case is in the hands of lawyers, as, almost always, it has to be, it is a quite different matter. No one, except James himself, claimed for the King power to make law of his sole authority; and, as has been noticed, James himself disclaimed the claim. Cowell went near doing so; but Cowell was a professor of civil law and not a common lawyer. Edward Forset goes somewhere near it, but he was an isolated writer, a minor official and not any sort of lawyer. There is in fact hardly anywhere to be found any suggestion that the King can make law. The judges under James I were not very clear as to how far law could be made even in Parliament; they were quite clear that the King could not make it. In 1610, they resolved that the King could neither alter law nor create an offence by proclamation. When, before 1640 or after, it is said by Royalists or others, that the King makes law, all that is meant, almost always, is that it is the King's assent and promulgation that gives force of law. The King makes law at the request of the Houses of Parliament and cannot make it otherwise. On the eve of the Civil War, Charles I declared explicitly and with emphasis for that view of the matter. Even during the war there were very few Royalist writers who maintained the contrary.

Yet there could be no claim to absolutism that was not a claim to make law. Before such a claim could even be definitely made, it had to be recognized that power to make law involves and includes all other powers. That had been seen by Bodin; and Bodin was read and lectured upon in England. But the fact was still by no means clear to most people. It was still

a question under James I whether any absolute power of law-making existed at all. Also it may fairly be said that until the difference between an act of legislation and a judgement as to what actually is law was generally recognized, no claim to absolutism could have been, generally, even understood.

What the King was claiming was not power to make law, but a right to break it. He claimed that neither statute nor common law bound him absolutely in all circumstances, and he claimed that whether, in a particular case, the circumstances were such as to free his hands he alone could judge. He claimed, that is, a right to override and set aside law, temporarily, in particular cases, when he judged it to be in the public interest that he should do so. Recognition of this claim as valid would have justified almost all the particular acts or claims of the Stuart kings, upon which conflict arose. No one at the time stated the principle clearly in general terms. Yet it seems to have been this principle upon which the King acted. Nothing else will explain that action in general except a theory of pure absolutism in the King or a theory of divine commission. But no theory of absolutism was really present, and a mere theory of divine commission was too indefinite to be practical. It proved nothing or too much. The claim was far more firmly based on the actual practice of the Tudor sovereigns. Whether or no this right of disregarding law on occasion, *pro bono publico*, existed in the King, was the main question immediately at issue between the Crown and the House of Commons down to 1641.

Chapter II

THE BASIS OF THE KING'S CLAIM

§1. LEGAL AND HISTORICAL

Put broadly, the claim of the Crown, disputed from 1603 to 1640, was a claim to disregard law whenever, in the King's judgement, it was best, in the general interest, that this should be done. That claim rested partly on Tudor practice, partly on its alleged expediency, partly, but to a slight extent only, on theories or sentiments concerning the King's divine commission, and partly on admitted facts concerning the position of the King in England. The legal case, strong to a point, involved a logical incoherency; argument from Scripture was vague and inconclusive or proved a great deal too much. Both derived most of their real appeal from considerations of expediency.

That the King was sole sovereign in England was declared on all sides; but what this meant or involved was in dispute. No one, or very few, thought of the King as sovereign in the full sense of Bodin. Yet it was not unreasonable to hold that, whatever sovereignty might mean, it at least implied the subordination of all other authorities and the right, on all occasions of disagreement, to say the last and decisive word. When Pym declared that he recognized the King as sovereign, but knew of no such thing as 'sovereign power',[1] it might well have seemed that he had emptied the word of all meaning.

Parliament might be an institution of great practical value; but how could bodies that met only at the King's pleasure, and sat only as long as he pleased, be conceived as sharing in his sovereignty? The King is disabled by custom and his own consent from making law or imposing taxation without the assent of Parliament. So also he is bound normally to govern in accordance with the law of the land. But the whole executive power is in his hands and he is responsible for the direction of policy, internal and external. In such conditions, Parliament must needs be bound, unless in extreme cases, to

[1] Speech of 1628. Rushworth, I, p. 562.

provide the money the King judges necessary. Nor, seeing that the laws are his standing orders and that he is responsible at all points for order and security, can it rationally be held that he is bound in all circumstances by the letter of law. In the great complex of national life, cases may frequently occur, emergencies may easily arise, in which, for the general good, action strictly illegal should be taken. Power to take such action is positively needed. And of the need of such action at any one moment the King alone is in a position to judge and is, in fact, the only possible judge. It cannot be even plausibly maintained that this way of seeing the constitution, which was, I think, the way of Francis Bacon and of Strafford, was anything but entirely rational.

Nor can it reasonably be denied that the claim of the Stuart Kings was strongly grounded in what must be regarded as constitutional law. The great Victorian historian, Samuel Rawson Gardiner, admitted that Francis Bacon's view of the constitution 'was nothing else than the theory of government which had been acted on by Elizabeth with general assent'.[1] Yet he found fault with Bacon for taking that view, just as, farther on, he found fault with Strafford for trying to maintain what he speaks of as 'the Elizabethan constitution'.[2] In 1610, Bacon was fifty years old; he was hardly likely at that, or any other, age to see the constitution as other than it had been seven years earlier, 'by general assent'. And what had happened by 1640 to change the law of the constitution?

Elizabeth had, in fact, done most of the things which aroused opposition when done by the Stuarts. She had interfered again and again with freedom of debate in Parliament; she had sent members to prison for action or speech in the House. She had raised forced loans, though only from individuals and such as could be repaid. But it is not easy to imagine a theory on which it would be lawful to compel A to lend money, but unlawful to force B and C to do the same. She had even, on one occasion, imposed a duty by proclamation. She had sent people to prison without showing cause, and so frequently that the judges had been moved to complain, not of the imprisonments, but because, being kept in ignorance, they never knew

[1] *History of England 1603–1642*, ed. 1883., vol. II, p. 193.
[2] *Fall of the Monarchy of Charles I*, ed. 1882, vol. II, p. 179.

which prisoners they must on no account release. Elizabeth had created trade monopolies and had continued to do so after passing the bill which abolished most of those at that time existing. She had issued ordinances which came, at least, very near to making law. She had officially declared that she was accountable for her actions to God only. Only a theory of a reserve power in the Crown to set aside law on occasion for the public good could account for the facts.

The principle that a long series of recent precedents overrides and practically nullifies precedents more remote is surely as sound logically as convenient in practice. The difference between the two sets of precedents shows that a change in the general conditions has been accompanied by a corresponding change in law. There is always, and must be, a more or less continuous adjustment of law to conditions that are constantly changing. In this particular case a new constitution of government had developed out of the wreckage and confusion of the fifteenth century. The Tudor monarchy lasted far too long to be regarded as that ephemeral thing—a dictatorship. It is not true that it superseded an ancient and established constitution. What it superseded was anarchy. The constitution of the late fourteenth or early fifteenth century had broken down long before Tewkesbury. And certainly no one in James I's time would have been pleased by its revival. That ancient 'free' and Parliamentary constitution in which the House of Commons of 1628 appears to have believed, was a mere fiction. The new monarchy was a reconstruction with old materials; but it was also, and necessarily, a new construction.

The terms 'absolute prerogative' or 'sovereign power' must, it seems, have been used to express that general claim to act, on special occasions, without regard to law, that was the essential claim of the Crown. Yet no such principle was ever formally and distinctly expressed officially or judicially. It might well have been laid down as a general principle of constitutional law in Bate's case, or in Hampden's, or even in Darnel's case. But on all such occasions the judges kept severely to the particular matter in dispute. They would not commit themselves to any general principle. They recognized

the existence of something called absolute prerogative, they declared that this or that could be done under it, but they did not say what it was.

It seems strange, and it must surely be significant, that no real attempt was made to give this suggestive term definition. The general principle could have been fairly deduced from the practice of the Tudor sovereigns. It might have been quite reasonably represented as no more than a generalization of Tudor precedents. Evidently the judges did not wish to commit themselves far: perhaps they dared not. Or it may be that they were restrained by a sense of the difficulty, or even impossibility, of reconciling such a principle with the fact that the King could not, of his own authority, make law. Whitelocke, in 1610, pointed out that if the action of the King alone is bound by the action of the King in Parliament, there is no ground upon which the King can claim to break law.[1]

The judgement delivered in Bate's case by Chief Baron Fleming was but a fumbling and tentative expression of a quite indefinite theory. The King's power, he laid it down, 'is double: ordinary and absolute'. He proceeded to explain that the King's 'ordinary' power is exercised through his courts under the common law, which cannot be changed save by Act of Parliament. The absolute power of the King, on the other hand, is that which deals, not with private suits or interests, but with public affairs and *salus populi*. Its exercise is not governed by rules of common law. It exists for purposes general and political and is exercised 'according to the wisdom of the King for the common good'. This question about compelling Bate to pay, he concluded, 'is material matter of state and ought to be ruled by the rules of policy'. By absolute power the judge apparently meant discretionary power conceived as inherent in the Crown, and not derived from common law. Necessarily the King must decide for himself whether to declare war or dissolve Parliament or refuse assent to a bill; and, in doing so, is bound only by his own judgement and the rules of policy directed to the common good. But did the judge mean that the rules of policy allowed the King to do anything he, in his wisdom, judged to be for the common good? The continuation of his argument indicates that he did

[1] See Whitelocke's speech in II, 1.

not mean that. He went on to argue, like his colleague, Clarke, that the King's right to impose port duties logically derives from the fact that the King can declare war and prohibit all trade with the enemy. If he can do the greater thing he must needs be able to do the lesser. But, if the King's right to act on his own judgement for the common good is without limit, there was no need for any reference to his right to declare war. The argument from it is, on that supposition, simply superfluous. One is left not sure of what the judge meant. In any case there is no clear distinction to be found here between prerogative which is defined by law, and a power that is *legibus solutus*. All that could positively be concluded from the judgement was that Bate must pay. Yet, perhaps Fleming came nearer than any other lawyer to a definition of the nature of 'absolute prerogative'.

§2. THE JUDGEMENT IN HAMPDEN'S CASE

More important, because less ambiguous, was the Hampden judgement of 1638. In February 1637, before the test case came on, the King asked the judges a question directly bearing on the issue they were to try. He asked them whether, when the good and safety of the kingdom in general is concerned and the whole kingdom in danger, 'the King may not compel all his subjects to contribute to the furnishing of such a number of fully equipped ships of war as he may judge to be necessary'; and 'whether in such a case is not the King the sole judge both of the danger and when and how the same is to be prevented and avoided'.[1] All the twelve judges to whom this was put, including Croke and Hutton, signed an affirmative answer which, prudently, adhered as closely as possible to the words of the question. In doing so they might have taken comfort from the thought that the kingdom was not visibly in danger.

Yet the judgement finally given seems to have been very strictly based on the assumption that a state of imminent public danger existed at the moment. Take away that assumption and the whole structure of the able and elaborate argument of Sir Robert Berkeley collapses. Speaking in Parliament, Falkland declared that the judgement given

[1] The text is in Gardiner's *Documents*, p. 108.

enabled the King 'to take from us what he would, when he would, and how he would'.[1] Had he read Berkeley's exposition with care and without prejudice he would have seen that it was not so. Yet the impression to that effect was widespread. 'If we grant ship money upon these grounds,' wrote Henry Parker, 'with ship money we grant all besides.'[2] In that impression lay much of the immediate importance of the judgement.

'This', said Sir George Croke, 'is a case of as great consequence as ever came judicially into my court.' Berkeley's reasoned judgement, though fatally flawed in one respect, was worthy of the occasion. 'I hope', he said, 'that none doth imagine that it either is, or can be drawn by consequence to be, any part of the question in this case, whether the King may at all times and on all occasions impose charges upon his subjects in general without common consent in Parliament. If that were made the question, it is questionless that he may not. The people of the kingdom are subjects, not slaves, freemen not villeins.' He went on to say that though the King is held to possess *jura summae majestatis*, 'yet his government is to be *secundum leges regni*'. His subjects 'have in their goods a property. . . . They have a birthright in the laws of the kingdom. No new laws can be put upon them, none of their laws can be altered or abrogated without common consent in Parliament.' 'This much I speak,' he added, 'to avoid misapprehensions . . . upon that which I shall say in this case.'

Positive and unambiguous, and perfectly consistent with what followed, as were these declarations, they were persistently ignored at the time, and have been even in our times. Berkeley was trying to make impossible just such crude and prejudiced interpretations as that of Falkland. What he said should have been fully sufficient for that purpose. But even the simplest distinctions will prove too difficult for those who do not wish to understand.

The whole of the argument that follows is based on the assumption that the kingdom is actually in danger. The King is demanding an extraordinary supply to enable him to defend the kingdom in danger; and of the extent and immediacy of

[1] Speech of December 7th 1640.
[2] *The case of Ship Money briefly discussed*, November 1640, p. 2.

that danger he is necessarily the sole judge. The question, therefore, is this: 'whether to set the commonwealth free and in safety from this peril . . . the King may not, of his own royal authority . . . impose a charge upon his subjects in general?' It is absurd, Berkeley argued, to say that in case of an imminent danger the King may not do what is necessary without consulting Parliament. Parliament is a slow-moving body and in it factious opposition is possible. It is absurd to say that the commonwealth should be exposed to ruin 'rather than such a charge as this . . . may be imposed by the King'.

It may here be remarked that in 1656, Oliver Cromwell, Lord Protector, said, in stronger language, exactly the same thing. 'If nothing should be done but what is according to law,' he told his Parliament, 'the throat of the nation may be cut while we send for some to make a law. Therefore, certainly, it is a pitiful beastly notion to think that, though it be for ordinary government to live by law and rule, yet . . . if a government in extraordinary circumstances go beyond the law, even for self-preservation, it is yet to be clamoured at and blottered at!' 'I confess,' he added, 'if necessity be pretended, there is so much the more sin.'[1] With that also Berkeley must have agreed since, plainly, the whole contention involves that the danger and the need must be real. As Laud wrote, in agreement with both Berkeley and Cromwell, 'such a necessity (but no pretended one) is above all law'.

Such a levy as this of ship-money, Berkeley pointed out, is not ordinary taxation: it can hardly, indeed, be called taxation. It is the King's duty to defend the kingdom, and his subjects are bound to assist and may be compelled to do so. 'Where Mr. Holborne supposed a fundamental policy in the creation of the frame of this kingdom, that in case the monarch . . . should be inclined to exact from his subjects at his pleasure, he should be restrained, for that he could have nothing from them but upon a common consent in Parliament, he is utterly mistaken herein.'

These last words have sometimes been quoted in isolation, with an implication that Berkeley meant that there was nothing to restrain the King from taxing arbitrarily at his

[1] Speech to Parliament, September 17th 1656. *Letters and Speeches*, Carlyle, ed. Lomas, II, pp. 543–4.

pleasure. But to quote them or refer to them without regard to what precedes them is inexcusable. Berkeley had expressly guarded against such interpretation. Holborne's mistake, in his view, lay in supposing that in every possible case and in all conditions, the King is inhibited from laying charge upon his subjects in general. Berkeley had roundly asserted that ordinarily he could not do so: he was arguing that there are cases in which he may. The words 'at his pleasure', in the passage quoted, obviously refer to the amount judged by the King to be necessary. Any other supposition makes the judge contradict himself and talk sheer nonsense. He was merely arguing, as Cromwell was to argue, that there must needs be in the King power, as he put it, 'to command provision, in case of necessity . . . for the defence of the commonwealth'.

Unfortunately, perhaps imprudently, and certainly quite needlessly, so far as his argument was concerned, Berkeley added famous words, which, also, have been sometimes quoted with no regard to context. 'The law', he said, 'is of itself an old and trusty servant of the King: it is his instrument or means which he useth to govern his people by. I never read nor heard that *lex* was *rex*; but it is common and most true that *rex* is *lex*; and because the King is *lex loquens*, therefore it is said that *Rex consetur habere omnia jura in scrinio pectoris sui*.' Certainly it was an unhappy quotation; but Berkeley was evidently giving the words a sense not Roman. The law is said to be in the King's heart, not because the King can of himself make law, but because law speaks by his mouth. It is inadmissible to make the judge's words contradict his earlier and quite distinct statements.

Berkeley, it may be said, went a little farther, but not very much. 'The King', he declared, 'of mere right ought to have, and the people of mere duty are bound to yield unto the King, supply for the defence of the kingdom.' Even Parliament is not free, and cannot rationally be conceived as free, to refuse what the King judges necessary for that purpose. On that ground, too, therefore, the levy of ship-money may be justified.

There is nothing to show that any of the judges concerned gave judgement for the Crown on grounds materially differing from those expounded by Berkeley. Finch's famous words seem merely to indicate agreement. 'Acts of Parliament', declared

Finch, 'to take away royal power in the defence of his kingdom are void. . . . They are void Acts of Parliament to bind the King not to command the subjects, their persons and goods, and I say their money too; for no Acts of Parliament make any difference.' The words are merely an emphatic expression of Berkeley's view of the case. They explicitly refer, and could only refer, to the defence of the realm in an imminent danger.

But here, precisely, was the radical weakness. The whole case for the Crown, as thus presented, stood or fell with the assumption that the alleged public danger was real and immediate. That, rather obviously, was not true. As Croke pointed out, even the King's writ for the levy of the ship-money, had alleged nothing more serious than the depredations of pirates. But, however serious its effects, piracy in the Channel had been in a highly flourishing condition for many years; the plea of extraordinary urgency was absurd. Of other danger there was none visible. It is hard to believe that the judges thought the danger was real. Yet the questions the King had asked them in February certainly seemed to imply that the kingdom was in imminent danger. Apparently Berkeley and most of his colleagues held that since, in the words of Oliver St. John himself,[1] the King is 'the sole judge of dangers from foreigners and when and how the same are to be prevented', no court could question his judgement or allow of any doubt of it.

The judges in Hampden's case did no more than declare that to cope with an imminent national danger the King may lay a general charge on his subjects. To say that this involved recognition of a power at all times to impose such charges flatly contradicts the terms of the judgement itself. The doctrine laid down might, perhaps, have been held to justify the forced loan of 1627; it could not have been held to justify James I's new impositions. But the fact that it justified what was actually, in effect, a general and direct tax made it seem of unprecedented importance. The fact that the judgement was accompanied by a clear and explicit declaration that in normal circumstances no such levy could legally be made, was overlooked or conveniently, and dishonestly, ignored.

It may plausibly be argued as, at the time, it was argued, that if the King's judgement as to what is needed for immediate

[1] Leading counsel for Hampden.

defence cannot be questioned, there is no means of preventing the grossest abuse of his power. In this connexion it seems permissible to quote words, spoken in another, but which express what was widely felt about the Hampden judgement. Speaking on the impeachment of Manwaring, in connexion with the forced loan of 1627, Pym had declared that it is all one 'to leave the power absolute and to leave the judgement arbitrary when to execute that power; for though these limitations should be admitted, yet it is left to the King alone to determine what is an urgent and pressing necessity . . . and the subject is left without remedy'. This contention, in one form or another, appears frequently; but it does not seem to be sound. Admittedly, only an urgent need of defence against immediate danger would justify an extraordinary levy of money: if the plea of urgency and danger were fraudulent the levy would be simply unlawful. It is really inconceivable that any government could for long maintain itself on a revenue raised illegally on transparently false pretences. It is true, indeed, that, as things were then, such false pretences, owing to the general ignorance of conditions abroad, might effectively deceive for a time. Pym, no doubt, was acutely aware of that. In 1642, a similar plea of imminent and urgent national danger was effectively made in the name of Parliament, with even less excuse than existed in 1638. When we say it was obvious that, in 1638, no emergency existed, we are ignoring the fact that to the mass of people then living no such fact was obvious. Yet even though such fraud might occasionally be successfully practised, it could surely not be so as a regular thing. After all, a right to act in the public interest is not a right to do as you please.

The judges in Hampden's case went, strictly speaking, no farther than to declare that in case of urgent danger the King could not only, as Croke admitted, impress his subjects and their ships for defence, but, as Finch said, 'their money, too'. But it may truly be held that more was implied than was stated in that decision. If the King could, simply on his own judgement of the danger of a given situation, impose of his sole authority a general tax, how could his right to act on his own judgement of what the public interest required be in any case limited?

The Hampden judgement went far to confirm that view of the King's position according to which, though bound ordinarily to rule *secundum leges regni*, he was not bound to respect law when, in his own judgement, it would be for the public benefit to disregard it. No such proposition was ever laid down from the bench: but it might fairly be argued that it was implied in the Hampden judgement. Perhaps it was a sense of this implication that led Berkeley to make his luckless remark about *rex* being *lex* and that made Finch declare with such offensive emphasis that in such cases no Act of Parliament made any difference. It may fairly be said that in the Hampden judgement the judges, at last, and even then not explicitly, had declared in favour of the Crown's essential claim and contention. Whether the Houses of Parliament saw it or not, it was for this, rather than for any other reason, that a reversal of the judgement was, from the Parliamentary point of view, a necessity.

§3. THE ULTIMATE QUESTION

'For forms of government let fools contest', wrote the great Dr. Johnson; and added, 'whate'er is best administered is best.' The two propositions are not necessarily held together. There were, perhaps, few who in the period before 1642, agreed with the Doctor's first proposition; though there were many more a little later. But very few indeed would have denied that, taking the word in its widest sense, administration is not only the main, but vastly the most important function of government. Legislation was very generally thought of, as Bacon thought of it, as something occasionally desirable or even necessary, but always more or less dangerous. The legislative organ has, therefore, but a small part to play. Unless it be identified with the head of the executive it is not easily thought of as sovereign. Whether he can make law or not it is, in spite of Bodin, the head of the executive who is thought of as sovereign. What is needed above all for peace and prosperity, is a strong executive power. Good government is, and must always be, according to law, but no King can govern with full efficiency if, on every occasion, his hands are tied by it. Actually, I think, the strength of the case for the Crown's

claim lay partly in the sense or belief that a power of acting without regard to law was practically and seriously needed. To many it seemed that those who sought to bind the King to law on every sort of occasion, were making good government at least quite needlessly difficult.

To what extent this was actually the case in Charles I's time would be a question difficult to answer, and it is one that there need be no attempt to answer here. Evidently, the recognition of a right in the executive to override law and coerce the judiciary tends necessarily to the destruction of liberty: but, since liberty depends on order, it may also actually, for a time, promote liberty. That seems to have been the case in the early sixteenth century: it does not seem that it was still the case to any serious extent under Charles I. Order and security were fairly well established, and there was no danger of relapse into anarchy. In extreme cases no one would blame a government for acting for a moment illegally. But sudden and sharp emergencies are, to say the least, rare; and the feeling that something must be done at once is commonly an illusion. Yet the belief, or the feeling, that the King should be free to break law on occasion, on his own judgement, seems to have been widespread. It rested, I think, on the perception of something less obvious on the surface, and of much more far-reaching importance, than any need of a power to act illegally in emergency.

It was a question whether a power to break law was any longer needed: but there was no question that there should, somewhere, be power to determine public policy with finality. In the constitution conceived as Coke or as Eliot conceived it, no such power securely and effectively existed. The claim of the Stuart King to set aside law in the public interest was, in fact, a practical solution of the difficulty involved in the sovereignty of the King in Parliament. Such a right would enable him, clumsily, but in general, effectively, to determine public policy in spite of Parliamentary opposition. It would not make him 'absolute', for it would give him neither the machinery of absolutism nor the right to alter law. But in the case of disagreement between himself and the House of Commons, on practical and immediate questions of public policy, it would give him the decisive word. Clearly, in the long run, either the King or the House of Commons must be given power

to direct public policy, if chronic deadlock was to be avoided. Recognition of the King's claim would have given it to him, if not completely, yet to a great degree. The strength of his case lay in the fact that there was as yet no tolerable way visible in which it could be given to the House of Commons. All this, however, only becomes clear after examination of the attitude and views of those who represented the opposition to the claim of the Crown.

II. THE OPPOSITION

Chapter I

PARLIAMENTARY CLAIMS AND CONCEPTIONS

THE counter-claim to that of the Crown seems never, at the time, to have been broadly and definitely stated by any one. Yet, from resolutions and declarations and from recorded speeches in and out of Parliament, the conception of the constitution held and acted upon by the House of Commons comes out with tolerable distinctness. It was, in fact, more capable of close definition than was the claim of the Crown.

As against the particular claims made by James I at the commencement of his reign, the House vigorously and definitely asserted claims of its own, in flat contradiction. It asserted an absolute right to decide contested elections to Parliament, and an equally absolute right to complete freedom of debate without interference. Obviously, if the part of the House in legislation was to be a real one, it was bound to insist on a right to freedom of speech and to freedom from arrest for its members during session. It was equally bound to prevent the King from obtaining, by any means, control of elections. 'Our privileges and liberties', the Commons declared, as early as June 1604, 'are our right and due inheritance, no less than our very lands and goods. . . . They cannot be withheld from us . . . but with apparent wrong to the whole state of the realm.'[1] The customary petition for confirmation of privileges they declared to be a mere 'act of manners'. In 1610, they asserted that it was an 'ancient general and undoubted right of Parliament to debate freely all matters which do properly concern the subject'. Wanting this, the liberty of Parliament would be destroyed.[2] All matters, they declared in 1621, that concern the state of the realm or of the Church, the making of laws and the redress of grievances, 'are proper subjects and matter of counsel and debate in Parliament'.

[1] Apology of the House of Commons, June 1604.
[2] Petition of May 23rd 1610. Text in Prothero, *Documents*, p. 297.

The privileges of Parliament, they added, 'are the ancient and undoubted birthright and inheritance of the subjects of England'.[1] In 1626, they protested very strongly against the imprisonment of Eliot and Digges for words alleged to have been spoken in the House. On the point of law, their great oracle, Sir Edward Coke, was quite decided. The King, he declares in his *Institutes*, 'cannot take notice of anything said or done in the House of Commons but by the report of the House'.[2]

From 1603 to 1629, the validity of every claim on behalf of the Crown to extraordinary and extra-legal powers was consistently denied by the House of Commons. In April 1628, in connexion with Darnel's case, the House drastically resolved that no one could in any case be lawfully imprisoned without cause shown. Selden, it may be remarked, had argued in court to the same effect, referring to Magna Carta and translating the words *per legem terrae* into 'by due process of law'. Again, in 1610, in connexion with the new 'impositions', Hakewill expressed the sense of the House of Commons in an argument to show that, with certain defined exceptions, no charge could be laid upon property without the authorization of Parliament.[3] That the levy of forced loans, or of any kind of direct tax not granted in Parliament, was absolutely illegal, was declared in the Petition of Right. Evidently the House of Commons was flatly denying that, unless perhaps in the most extreme and exceptional cases, the King had any right to break law.

That since the King admittedly cannot make law by himself he can have no claim to break it, must be regarded as logically one of the main contentions of the opposition. It was clearly stated by James Whitelocke, in a speech of 1610, on the new impositions. In every commonwealth, he said, there are certain powers that belong only to 'the sovereign power of that state'. The power of imposing duties is certainly one of these. 'There is then no further question . . . but to examine where the sovereign power is in this kingdom; for there is the right of imposition.'

'The sovereign power', he contined, 'is agreed to be in the

[1] Protestation of December 18th 1621. In Prothero.
[2] *The Institutes*, iv., ch. I., ed. 1797, p. 12.
[3] See Gardiner, vol. II, ch. 12 (1883).

King; but in the King is a twofold power.' It is only in Parliament that the King is fully sovereign. The King in Parliament 'doth rule and control' the action of the King *solus*. Power to make law, to naturalize or to legitimate and to judge without appeal, all, it is agreed, belong only to the King in Parliament. Imposition of new duties alters the right of the subject in his property and so involves alteration of law. 'The power of imposing and power of making laws are *convertibilia* and *coincidentia*, and whosoever can do the one, can do the other.'

This remarkable utterance goes far to destroy the force of the argument from Tudor practice. It need not be supposed that in speaking of the 'sovereign power' of the state, Whitelocke was thinking of it as unlimited. No such conception was necessary to his argument. He was asserting that power to tax is included in and is at bottom one with legislative power, and that if law can only be made by the King in Parliament then out of Parliament the King cannot tax. He was asserting, too, that since the action of the King alone is regulated and bound by the action of the King in Parliament, there can be no ground for a claim to break law.

To most people, however, Whitelocke's argument would have appealed but feebly. He had pointed out a logical flaw in the case for the Crown based on Tudor precedent; but the Tudor precedents remained to prove that what was logically absurd was humanly possible. The Stuart Kings might, perhaps, have inherited from the Tudors a logically indefensible position. But a constitution can hardly be constructed logically unless one is prepared to ignore the actual structure of society with its cross-currents and opposing tendencies.

It seems that, for the House of Commons, what formed the main ground of opposition was the belief in an ancient Parliamentary constitution, resting on fundamental laws yet more ancient. As far as possible the House ignored the practice and the precedents of the sixteenth century, and went back for its standing ground to times of which it really knew next to nothing. Statutes and charters that change had made more or less obsolete and of which, frequently, the very meaning was not understood, precedents arising under conditions so different from those of the moment that no application of them could

reasonably be made, were appealed to as authoritative in a changed world. Everything in those far-off times that did not fit with the notion of Parliamentary government, continuous even from Saxon days, was conveniently ignored or simply not understood. It would have been hard indeed to have found for that imaginary ancient constitution a definite station in time. But all dates behind 1500 seem to have been much the same to the House of Commons. Ignorance of history, and a totally uncritical attitude towards ancient documents, counted for much in the political thought of the period right up to the Restoration. The most learned antiquaries of the time, Selden or Cotton, may well have doubted the validity of Coke's historical theories. But for the ordinary country squire or merchant there seems to have been no doubt, and so no difficulty in believing what he wished to believe. Generalization of this sort, however, concerning the thought of bodies or classes of people can rarely be fully justified. Almost always it involves guesswork or exaggeration or both. We are apt, when we see the many practically following the one, to attribute the views of the one to the many. But the inference is fallacious. In the present case I do not think the evidence sufficient to enable us to generalize with any high degree of accuracy concerning what was in the minds of the members of the House of Commons and still less of those they represented. Most of them, we may be sure, did not think historically. In most of them there was, perhaps, little more than a determination to defend themselves and their property against arbitrary interference and exaction; and a determination that what they saw as public rights and liberties should be respected. Along with that went, perhaps in most cases, a certain genuine fear of the bogy of Popery and, of course, varying degrees of impatience, intolerance, and anger. Probably nearly all of them believed, without a doubt, that they were acting in the general interest.

It is suggested by Gardiner that, in Pym's speech on the impeachment of Manwaring, the 'political principle' maintained by the Commons was stated. 'The best form of government', Pym declared, 'is that which doth actuate and dispose every part and member of a state to the common good.' Undeniably, in such a system, there would be, as Pym said, 'concord and interchange of support' between all classes and

institutions. But, he continued, if this concord once breaks down and 'one part seeks to uphold the old form of government and the other part to introduce a new, they will miserably consume and devour one another'. How is this disaster to be prevented? 'It is true that time must needs bring about some alterations, and every alteration is a step and degree towards a dissolution. Those things only are eternal which are constant and uniform. Therefore, it is observed by the best writers on this subject, that those commonwealths have been most durable and perpetual which have most often reformed and recomposed themselves according to their first institution and ordinance; for by this means they repair the breaches and counterwork the ordinary and natural effects of time.'

This passage is quite strongly reminiscent of the *Discorsi* of Macchiavelli, and also, slightly, of Bodin. But Pym, obviously, must have meant that these general considerations applied particularly to England at the moment. It appears, then, that there exists, or rather has existed, in England, a constitution so perfect that it involved the harmonious co-operation of all in complete concord. It has, it seems, partially broken down. A party, Pym says, in effect, is endeavouring to introduce a new form of government. He felt no doubt that it was Charles Stuart, and not John Pym, who was the head of that party. The only remedy is a return to the original arrangements. Any alterations that have come about in the grand old system must be swept away. Formally, the principle asserted is that of a pure and absolute conservatism, defiant of all the laws of life. But all that Pym can well have meant was that our ancient constitution was perfectly adapted to England's requirements, and that we must return to it and resist all further innovations.

'Plain footsteps' of the fundamental principles of that ancient constitution could, he declared, be found among the Saxons. 'They were of that force and vigour as to overlive the Conquest, nay to give bounds and limits to the Conqueror. It is true they have been often broken, but they have been often confirmed by charters of Kings and by Acts of Parliament. But the petitions of subjects upon which those charters and acts were founded, were ever Petitions of Right, demanding their ancient and due liberties, not suing for any new.'

'A far nobler view this', Gardiner commented, 'than

Manwaring's!' But in sixteenth-century France, a similar legend of an ancient Parliamentary constitution had been, at times, popular with opponents of the Crown: and Pym's history is little better than that of Hofman's *Franco-Gallia.* Nor is it clear what can give nobility to a view or to its expression, unless it be honesty in arriving at it and sincerity in utterance. Yet certainly Gardiner was right on the main point. Full of ambiguities, as the speech was, and based on a conception of an impossible past, it yet did fairly represent one of the main contentions of the House of Commons.

The prevalence of this conception of an ancient Parliamentary constitution was due, in some large measure, to the influence of Coke and the authority that was attached to his oracular and dogmatic utterances. Though a less representative personage than Eliot or Pym, Edward Coke, by the sheer force of his personality and the prestige of his learning, was probably the most formidable of all the government's enemies in the early years of Charles I.[1] Determined always to have his own way, he used his great learning and ingenuity to twist his texts to fit his personal views; probably without conscious dishonesty. It has been wittily said of him that he invented Magna Carta: and certainly the version of it which he propagated was largely a fiction. Apparently he saw in it an expression of the fundamental law of the realm, not mutable, and a revival of principles that had been recognized in England since it was English. In 1643, interpretations of some of the clauses of the Charter that might have astonished even Coke were in vogue among the supporters of Parliament. That it was so, was probably to some extent due to the influence of his misconceptions.

From the speeches of Sir John Eliot there is little to be gathered, and from his writings almost nothing that is relevant. It is probable that his staccato rhetoric was the natural expression of his feelings; but it is instructive chiefly as indicating the feelings of those to whom it was addressed. What seems above all to characterize Eliot's attitude is his passionate belief in the wisdom of the House of Commons. Apparently the Houses of Parliament were to him, as to many of the later Parliamentarian

[1] So Charles himself seems to have felt. See Holdsworth: *The Influence of Coke on the Development of English Law,* Essays in Legal History, 1913.

writers, the mind, the reason, the voice, the condensed wisdom of the whole nation. He might seem to have agreed with Henry Parker that the representative body 'is, indeed, the state itself'. To him, says Gardiner, Parliament 'was scarcely a collection of fallible men. . . . Whoever tendered other counsel than the House of Commons had to offer was a divider and a traitor.' This might be thought to be a libel on Eliot; but it is borne out by the extravagance of his denunciation of Buckingham in 1628. And it is worth while to point out that it is but a short step from a belief that every one whose outlook differs from that of the House of Commons is a traitor, to a belief that the King is bound on all occasions to act on its advice. That step was to be taken before long, though it never was taken by Eliot.

Whitelocke had pointed out that an executive authority, having of itself no power to make law, could not logically claim a right to break it. Pym had championed the view that the only way of salvation lay through a revival of fundamental laws or principles, traceable back through English history to the remotest times. In one way or another both these contentions seem essential to the position taken up by the House of Commons. Yet there was a third, even more practically compelling because more strongly held and clearly apprehended. The main contention of the opposition in the Parliament that followed the forced loan was that the rule of law is endangered by any claim to a power to disregard it and that to recognize such a claim would be to render insecure all property and all rights at law. Of that contention, Sir John Eliot was, perhaps, the most effective exponent. Speaking on the forced loan in 1628, he argued that if law can be so disregarded, all property is at the mercy of the executive. Nor is it only a question of property: 'it is of more; more than is pretended; more than can be uttered. Upon this dispute not alone our lands and goods are engaged, but all that we call ours.'[1] He was saying what, with more elaboration, Pym said at the trial of Strafford. Alike, in 1628, and in the early months of 1641, the main assertion of the Commons was that the whole fabric of society, all property and every man's rights at law, were endangered by the claims of the Crown.

[1] Speech of March 22nd 1628.

What may be called the Parliamentary conception of the constitution involved, it seems, a divided sovereignty. It was, during the Civil War, frequently asserted, on both sides, that the English constitution is a 'mixed' monarchy. The King is head and master of the executive and all directly coercive power is controlled by him. He can make binding treaties with the foreigner, he can make war or peace, directly or indirectly he appoints officials of all sorts, he summons and dissolves Parliament. He can direct, as he pleases, the foreign policy of the nation though he may not be able to pay for it. But his prerogative, or discretionary, power is part of the law of the land, defined and bounded by it. He is 'sovereign', in fact, by courtesy only: sovereignty, or what there is of it, lies only with Parliament, of which the King is but a part. Only in Parliament can he legislate or impose taxation or alter in any degree the rights of his subjects. He is bound, in all relations and on all occasions, except perhaps in the most extreme and improbable cases, by a law he neither makes nor can alter. Yet no law can be made without his free assent. This, in the view of the opposition, is the fundamental law and constitution of the kingdom.

'If the House press the King to grant unto them all that is theirs by the law,' wrote Sir Walter Raleigh, 'they cannot in justice refuse the King all that is his by the law. And where will be the issue of such a contention? I dare not divine; but sure I am that it will tend to the prejudice both of King and subject.'[1] In a sense the words were prophetic. In such a constitution, had it really ever been established in practice, there must have been a constant tendency to deadlock. What is to happen when profound disagreement develops between the King and the Houses of Parliament? Sovereignty lies if anywhere with the King in Parliament: and that is just the difficulty. It is a question of who has the right to make a needed decision: it is, ultimately, a question of who has the right to determine public policy. In the constitution as conceived by the House of Commons that right is diffused among the bodies in conflict. In certain respects the King would have the better position; but his determinations could always be finally frustrated by refusal of adequate supply. There

[1] *The Prerogative of Parliaments*, published 1644. In Harleian Misc., V, 208.

could in the long run be no escape from deadlock in a constitution which gave control of expenditure to one authority and control of revenue to another.

It has already been pointed out that the King's claim to disregard law on his own judgement, for the common good, offered a solution of the difficulty, however clumsy and objectionable it might be. The House of Commons in 1628 had no solution of any sort to offer. Later, indeed, in 1642, claims were made in the name of Parliament which, if established, would have effectively solved the problem. But those claims had no basis in history or in law and were simply revolutionary. Formally, they altered the whole position and produced civil war.

Chapter II

THE VIEWS OF SIR EDWARD COKE

To the question what is to be done when the King and the Houses of Parliament are hopelessly at variance, yet another theoretic answer was given or suggested. Its champion was Edward Coke; and for a time it might have seemed that his answer was the only one possible. But that answer of his to the particular question cannot be properly detached from his conception of the constitution of government in England as a whole. His way of thinking of the matter, though already becoming what we call old-fashioned, was, nevertheless, representative of a considerable amount of political thought in his day, especially among lawyers. And his views have special importance by reason of the great prestige and lasting influence of this very learned and still more masterful man. His influence, not only on the development of law but on politics, can be traced long after his death in 1634.

It has often been said that the idol of Coke's worship was the common law of England. 'For any fundamental point of the ancient common laws and customs of the realm', he wrote, 'it is a maxim in policy, and a trial by experience, that the alteration of them is most dangerous; for that which has been refined and perfected by all the wisest men in former succession of ages, and proved and approved by continual experience to be good and profitable for the commonwealth, cannot but with great hazard and danger be altered or changed.'[1]

There is, however, nothing very distinctive about this utterance, and so far either Pym or Francis Bacon might have gone with Coke. But, though the passage logically involves that the sacred common law, even on fundamental points, can be altered or changed, yet in Coke's mind there was on this point a doubt. It was a somewhat confused doubt. Coke's worship of the common law as a sort of essence of wisdom distilled by the ages, made him reluctant to admit that there

[1] *4 Reports*. The thirteen parts of Coke's *Reports* were published at various dates from 1600 to 1615. His *Institutes* appeared in 1628.

could anywhere be power to alter it arbitrarily. So also, for obscure reasons, he seems to have felt reluctance to admit that decisions on a question of what is law, or even of what law should be, could be made by anything but a law court. Accordingly he clung, rather belatedly, to the old conception of Parliament as primarily and essentially a High Court. He knew indeed, that Parliament, in the full sense, both could and did make new and alter old law. He knew that, as Lambarde had declared in 1591, 'it delivereth laws that do bind all persons in all causes'. But he preferred, so far as that was possible, to think of its Acts as declaratory judgements rather than as acts of mere will. It seems that he tried hard to believe that the traditional phraseology of the law books still represented the fact.

He could only do so confusedly. It was becoming constantly more clear that, whatever might be said of the House of Lords, Parliament was not a court of law in any ordinary sense. Its actual proceedings, session by session, showed that it did not normally so think of itself. It was admitted that it could lay down rules of law without reference to any particular case; it was admitted that it could make new law, and even that it could alter the sacred common law. It was possible for a lawyer to regard its Acts as declaratory judgements; but even so it would have to be admitted that it could do things which no ordinary court could do and that these things were the most important of its doings. Not only so, but, if you say that Parliament is a Court which can render declaratory judgements which bind every one and may actually alter the law as previously understood, you are merely saying in a clumsy and confused fashion that Parliament is a legislative body. You will have, in many cases, to admit that, before the judgement in Parliament, no one knew what the law was or even that every one supposed it to be other than it was. To say that new law is not made by such a judgement seems mere nonsense. As Hobbes expressed it later: 'For what is it else to make a law but to declare what the law is?'[1]

All this, of course, Coke really knew very well. 'Of the power and jurisdiction of the Parliament', he declared, 'for making of Laws in proceeding by Bill, it is so transcendent and absolute as it cannot be confined either for causes or persons

[1] *Behemoth*, p. 147, ed. Tönnies, 1889.

within any bounds.'[1] The words are in some respects ambiguous. But it is certain that in no other court was there any power even remotely analogous to the power of proceeding by bill. If that power 'cannot be confined', it matters very little what sense Coke gave to the words 'absolute' and 'transcendent'. His High Court of Parliament is certainly a body that can make law by a process certainly not judicial.

It seems, however, certain that Coke never really believed that Parliament's power of making law could not be confined. He seems at least to have doubted whether it could do more than apply old principles to new conditions. He asserted roundly that 'if any statute be made to the contrary of Magna Carta, it shall be holden for none'.[2] Evidently he was thinking not of the actual provisions of the Charter, but of the principles he imagined he found there. Again, in reference to what is called Bonham's case, he made much the same assertion. 'In many cases', he says, 'the common law will control acts of Parliament and sometimes adjudge them to be utterly void: for when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such acts to be void.'[3] In Coke's view 'common right and reason' were equivalent to the sacred principles of the common law, derived from, if not actually one with, the law of nature itself. Some of them, at least, he found in the Great Charter.

Thinking thus, Coke felt no difficulty in attributing to the High Courts of Justice functions essentially political. Parliament itself was indeed the highest court; any judgement it delivered on constitutional questions in dispute would be final. But, if unfortunately, the High Court of Parliament so disagreed that no judgement could be obtained from it, then, necessarily, the judges of the court below became the final judges of what was constitutional. The House of Commons may hold and declare that the judgement in Bate's case is wrong, but its opinion is irrelevant. It has no jurisdiction in the matter. Right or wrong, the judgement in the Exchequer has practically made constitutional law in a matter of the gravest

[1] *4 Institutes*, p. 36.
[2] *3 Institutes*, 111. Coke was here referring to or quoting from a Parliamentary declaration of 1368.
[3] *8 Reports*, 118.

importance; and there is no way of altering it but by Act, or judgement, of Parliament. And of that there is no possibility so long as King and Houses disagree.

To Coke, thinking habitually in terms of law, all that seemed quite satisfactory. Questions at issue between King and subjects, questions as to what the King could or could not do in given circumstances, were to him merely questions of a law in essentials unchanged for ages, if not unchangeable. Such questions could be decided only by law courts; and if the highest court, because of internal dissension could give no judgement, the matter could always quite well be dealt with in the courts below. That contingency, I incline to think, Coke contemplated with a certain satisfaction. He had a great power of closing up his mind against what he did not want to see or understand; a power that produced at times an effect of astonishing density. But he must have been conscious of a tendency in Parliament to develop into something more like a Roman Emperor than a law court.

Neither party to the great dispute could be satisfied to accept Coke's theory, or be brought to submit their differences to the decision of a third party. From the point of view of the King, Coke's solution of the difficulty gave too much power to the judges; from that of the House of Commons too much to the King. The King indeed might, conceivably, have been content to rely upon his admitted right not only to appoint the judges but to dismiss them at pleasure. Yet actually he had found that they gave to his claims but half-hearted support. He never got from them all he wanted. He claimed that when his prerogative rights were, even indirectly, involved in a suit, judgement should not be given till after the judges had consulted with him or with the Council. Admission by the judges of this claim would have been practically equivalent to an admission that they were bound to take the King's own view of his rights. In 1616, in connexion with the case of commendams, the King came near to establishing this important point. Eleven out of twelve judges agreed, under severe pressure, that when the King conceived that a case concerned him 'either in power or profit', they ought, on his requisition, to stay proceedings till they had consulted with him. Coke alone held out. His honourable obstinacy led to his dismissal from the bench; but

the King was never able to obtain full recognition of his claim. But he could not be content with less. He could not afford to admit that any court could adjudicate upon his claims in independence of his will. After Coke's dismissal, and partly in consequence of care in subsequent appointments, the support of the judges became more steady. But it was never entirely reliable. Such care in such appointments is confession of weakness and in the long run shows itself to be so.

As for the House of Commons, it could not reasonably be supposed that it would tamely allow of the decision of all constitutional issues by a body of judges whom the King could dismiss for disagreement with him. The practical objection to Coke's scheme was not so much that it gave too much power to the judges, as that it placed them in an impossible position. It should have been evident that no settlement on these lines was possible. The essential question as to who was to determine public policy could not, conveniently, be left to the judges. Coke's suggested solution was, in fact, merely formal and solved nothing. His scheme would merely have introduced a third competitor into the struggle for power.

Chapter III

THE NATURE OF THE CONFLICT

WRITING in 1664, when much of the dust had settled, Richard Baxter, then nearly fifty years old, gave us an account of his recollections concerning the opposition to ship-money. Its opponents, he tells us, 'said that the King, having long disused Parliaments . . . had no way to lay them by for ever, but to invade the subjects propriety and to assume the power of laying taxes and raising money without them; and if thus Parliaments and property were destroyed, the government[1] was dissolved or altered, and no man had any security of estate or liberty or life, but the pleasure of the King whose will would be the only law. . . . The poor ploughman understood but little of these matters; but a little would stir up their discontent when money was demanded. But it was the more intelligent part of the nation that were the great complainers; above all', he adds, 'the country nobility and gentry.'[2]

Prejudice is suggested, and may, perhaps, be generated, by speaking of the opposition under Charles I as 'the popular party'. The evidence we have seems clearly to point to the conclusion that the actual mass of the people of England were not so much indifferent to, as ignorant of, the issues involved. It was not only the 'poor ploughman' who understood little of these matters. It seems probable that to an actual majority the argument, on both sides, would have been, largely, unintelligible. No doubt every one felt the ordinary objection to being taxed; but to the mass it can hardly have seemed to matter whether they were taxed by the King or by the King in Parliament.

I see little ground for Baxter's opinion that 'it was the more intelligent part of the nation' that complained most. But it is true that, as time went on, from 1603 to 1640, the dominant and locally ruling classes became more and more earnestly and completely united in opposition to the King's theory of his

[1] That is, in our phrase, 'the constitution'.
[2] *Reliquiae*, Part I, ed. Sylvester, p. 17.

position. That union lasted, on the surface, to near the end of the first session of the Long Parliament; and when it broke down came civil war. That, of course, is a fact of the highest significance in more ways than one.

Before the end of the sixteenth century the increased power and importance of Baxter's 'country nobility and gentry' was becoming manifest in many ways. Elizabeth's position had never been quite that of Henry VIII. There is, perhaps, some justification for regarding Henry VIII's government as a dictatorship: the history of Elizabeth's reign suggests no such thing. Henry may be said to have revived a somewhat vague Parliamentary tradition and given to it substance and reality. Elizabeth had inherited his system and under her, in spite of administrative arbitrariness, government was more, in a real sense and in higher degree, parliamentary than ever it had been before in England.

Slightly, perhaps, but quite distinctly, the balance of power in England shifted between the death of Henry VIII and the death of Elizabeth. The contrast that exists between the political writings of Henry VIII's time and those of Sir Thomas Smith and Sir John Hayward is highly significant. The earlier emphasis on the idea of the Prince was tending already to change to emphasis on the idea of Parliament. A corresponding change began also to appear in the attitude of the House of Commons. The causes of all this were in the main social and economic. For a long time past the wealth of the landowning class and commercial classes had been steadily increasing; while, at the same time the fall in the value of money was making the position of the Crown more difficult. Still more important was it that, while their wealth increased, the local aristocracies were acquiring larger powers and new functions in local government, as agents of the Crown. Under tutelage and direction from the centre, as well as through actual trial and experience, they were learning to use their powers and, above all, to co-operate in using them. Now, under Charles I, it was just these classes, enriched and conscious of power, that were in course of rebellion against Tudor tradition. The system was in working order; they had learned their lesson and tutelage was no longer necessary to them. The Crown's power of arbitrary interference and direction was becoming a danger

to the position they were establishing. That position would never become secure until, with the Houses of Parliament as their instruments, they could themselves control the action of the Crown. Very few, if any, of them were conscious of that fact as early as 1628; but a determining fact it was and would remain.

England, declared an acute, original and anonymous writer of the early months of 1660, is really governed by its 'gentry'. It is governed that is, he explains, by a group of land-owners, each of whom 'within the bounds of his estates, acts the Prince'. Wealthy townsmen gain entry into this class by buying land and a coat of arms and a pedigree; 'which ingenuity and goodwill may easily supply'. From the ranks of 'this sort of people' come our military commanders, justices of peace and sheriffs, and they fill and dominate Parliament and control elections. The votes of the commonalty 'are managed by them as the horse by his rider'.[1]

It may seem surprising that this should be said after all that had happened and before the Restoration. However that may be, it seems to be the fact that the change that had taken place in the position, and therefore in the outlook, of the locally governing classes, necessitated, at least by 1625, a readjustment of the constitutional position left by the Tudors. The radical fault of the two first Stuart Kings was that they failed to see the necessity or saw it only too late.

A great deal has been written about this period of English history on the theory or the assumption, that the classes then represented in Parliament were resisting an attempt to establish formal absolutism in the King. The fact seems, rather, to be that it was the King who was on the defensive. He was trying, rather unintelligently, to hold an untenable position. It seems, indeed, that, whatever his aim had been, there would have been, in the circumstances, no real chance of the establishment of absolute monarchy in England. The union of the dominant classes in opposition must, in any case, have made it impossible.

To have established effective absolutism the King must have done much what was actually done in France, in conditions

[1] See *A Discourse for a King and Parliament*, 1660, sect. 1. The writer argued for a Restoration.

radically different. He would have had gradually to gather all branches of local administration into his own hands, either superseding altogether the existing local authorities or forcing them to become mere agents of his commissioners. Even so, he would probably, as in France, have needed a standing army. Till these things were accomplished even the establishment of a theoretic right to make law would practically have been of little avail. But that also must have been recognized before absolutism was established.

Hardly any one in England, before the Civil War, thought of such developments as either practicable or desirable. A few foolishly enthusiastic clergymen, perhaps a few such isolated dreamers as Edward Forset, may vaguely have done so. But the thing was so evidently impossible that even the King himself could not seriously hope to see it come about. In France the claim of the King to a pure absolutism was centuries old; and it is significant of the profound difference between France and England, that it had there been developed above all by lawyers. In England the idea had barely been suggested when the Long Parliament met. But just as in sixteenth-century France the long anarchy of the civil wars propagated and made popular the old claim of the King to absolutism, so civil war in England produced in some the belief that through royal absolutism was the only way of escape. Yet, in England, even when it had come to be a question how order could ever be re-established there were only a few who saw an answer in absolute monarchy.

Chapter IV

THE POSSIBILITY OF COMPROMISE

It seems to me that the difference between the conception of the constitution maintained by the House of Commons up to 1641 and that implied in the action of the Crown, is not so great as is commonly supposed. Certainly no very deep differences of opinion appeared among the lawyers over Hampden's case. In giving judgement against the Crown, Sir George Croke laid it down that in case of 'extreme necessity and danger', the King may impress for defence both his subjects themselves and their ships, 'but to lay a charge to provide new ships, that he cannot do'.[1] The validity of the distinction rested in part, and solidly enough, on the fact that ships take time to build. Yet it seems a little absurd to say that while the King may press ships, he cannot take the money to equip them for use in war. In order to avoid admitting too much, Croke had made his distinction too sharp.

Oliver St. John, speaking on behalf of Hampden, argued to the same effect. Though 'in times of imminent danger', the King may impress ships, yet the right of subjects in their property cannot be altered save by Act of Parliament. If extraordinary supply be needed, Parliament must be asked to give it. Both he and Croke argued the question as one of law only: Berkeley argued it as mainly one of expediency. But all three agreed that the King is the judge of the extent of the danger at any one moment, and St. John at least agreed with Berkeley that it is for the King to say how that danger should be met. All three agreed that, in ordinary circumstances, the King is bound by the law.

It is, of course, necessary to avoid any confusion of the attitude of the House of Commons in 1628 with the claims made in the name of Parliament in 1642. The writer of a pamphlet of 1643, who had himself sat in the Parliament of 1628, emphasized the difference. In 1628, he pointed out, no one had dreamed of denying that the King had a right to refuse

[1] *Notes on Croke's Judgment*, S. R. Gardiner. Camden Misc., vol. VII.

assent to bills or of asserting that he had not sole control of all armed forces.[1] The ultimate question may have been the same at both dates: the formal and positive question indubitably was not the same. It may fairly be said that, in 1642, it was the Royalist party that, in its official declarations, represented the view of the Commons of 1628.

It is obvious on the face of the facts that the conflict between Charles I and his Parliaments on constitutional questions, was continuously aggravated by disagreement on other and irrelevant matters. It was aggravated further by mishandling and misconception on both sides; each side being exasperated by the other's mistakes. The deadlock of 1629 was largely due to differences of view on foreign policy. The attitude taken up by the House of Commons on these matters placed the government in a difficult position, and led to the foolish venture of the forced loan. The whole story illustrates the weakness of a constitution which placed power of effective direction nowhere. Charles mismanaged a difficult situation; but its difficulty was due as much to the House of Commons as to him. If the House were bound to resist arbitrary taxation and dangerous claims, it may as justly be said that the King was bound, in the general interest, to fight against the ignorance, prejudice and intolerance of the House. Fumbling and inept as was the King's conduct of foreign policy, it was yet based on a far more accurate appreciation of conditions on the Continent than was that which prevailed among the Commons. They were obsessed by the idea of danger from Spain and from Catholics at home. They seem to have imagined that Austria and the Catholic League were dependent on Spanish support; just as they imagined that Richelieu intended to destroy Protestantism in France. 'Spain is rich', declared Sir John Eliot in 1623. 'That is our Indies. Breaking with them we shall break our necessities together.' Actually the notion that the Palatinate could be recovered, with little expense, by naval operations against Spain, was a complete illusion. The King, of course, should have fully explained the position: that he did not do so was at least in part due to the fact that he did not see it clearly himself. So, as things were, sheer misunderstanding, begetting mistrust and further misconceptions, accounts for much

[1] *Letter of a Grave Gentleman*, May 1643. B.M. E. 102 (13).

of the friction. It may seem that there should have been no great difficulty in reaching a working compromise through definition and reduction of the claims of the Crown. Not till 1640 did Charles I begin to realize the strength of the forces opposed to him. He clung obstinately to what he quite reasonably regarded as legal rights, forgetting that in the long run law is only so far stable as it is based on need. These things counted; but behind them there was something deeper and perhaps more important. Charles did not really think of his claims as merely legal and based on custom or precedent. He was afflicted with a profound sense of a divine commission to rule. It seems that he felt obscurely that the power it gave him must not be bargained away.

Apparently he thought of himself as bound ordinarily by the law and custom of the land, and, yet vaguely, he felt himself possessed of a power that could not be definitely limited. In his own mind, if nowhere else, was a claim to absolutism. He never avowed it or formulated it, even to himself; he did not really know that it was there. But there, it seems to me, it was; and its existence, suspected, glimpsed or perceived, helps to account for the increasing suspicion with which his action was regarded. It may perhaps be said that it was, after all, a claim to absolutism, albeit almost unconscious, that the House of Commons was resisting. All this is somewhat speculative and may seem merely fanciful. But here, as everywhere in human history, we have to account for facts of which, to our minds at least, the final explanation must be psychological.

On the other hand, the House of Commons might conceivably have met the King on the common ground of an Elizabethan constitution requiring definition and revision. But speculation as to what it might have done, had it been other than it was, is clearly useless. At least as early as the later years of James I there was, already, an implication that the main question at issue was the question as to where lay the right to determine public policy. Already the House of Commons was, visibly and seriously, trying to control it. That was an issue that might be shelved but on which compromise was impossible. It is true that even in 1628 no one seems yet to have seen clearly that it was the main issue. But whether that were perceived or not, the will to control public

policy was there and formed an absolute barrier against compromise.

After 1629 there came a change. How far it had gone by the end of 1640 it is not possible to say. In any case, the experience of the Long Parliament, joined to all that had gone before, forced the leaders of what proved to be a majority in the Commons, to see that, if it were effectively to control policy, it must claim far more than it had ever yet claimed. It must, indeed, claim for itself just what it denied to the King. It is this fact that connects the conflict of 1628 with that of 1642. The underlying issue still unsettled, was still the same. But the claim of the House of Commons in 1642 to powers which should enable it to do what the House of 1628 had in vain tried to do produced the Civil War.

III. POLITICAL THINKING 1603–1640

Chapter I

PREFATORY

RIGHT up to 1640 the constitutional conflict produced little or no directly relevant literature. The controversy was carried on in Parliament, and in the law courts. The fact may seem strange in view of the number and mass of the controversial works concerning religion or the Church published during the same period. Far more was written about the King's relation to the Church than about the King in any other relation. New developments of opinion and practice within the Church produced increasingly violent controversy which merely culminated in 1641. But the great political controversy, whose small beginnings were in 1640, was preceded by a long silence.

But there is nothing really strange about the fact. The themes of the religious controversy had for the most part long been defined and were indeed well worn. The issues were well known. Men knew, or at least could know, exactly what they were talking about when they attacked or defended Calvinism or Romanism, or argued about the proper government of the Church or the extent and meaning of royal supremacy. But the constitutional issue was relatively very new: so new that up to the end of the reign of James I it was far from clear what the question was. And under Charles I an acute crisis arose quickly and before the main issue had been defined. After that any sort of attack on or criticism of the King's claims was more or less dangerous; as indeed either attack or defence had been before.

Putting aside the controversies that centred round the Church, most of the published writings of the period that concerned politics were either wholly theoretic or were fragmentary and incidental. A great deal was written about the right relation of the State to the Church: on other aspects of the State there was relatively very little. The nearest approximation to political philosophy was made, I think, by certain

Jacobean and Caroline divines. These thinkers, though none of them were of the calibre of Hooker, at least concerned themselves seriously with what is perhaps the most fundamental and the most important question of political philosophy. From Overall to Sanderson they were engaged in the development of a theory of the nature of political obligation.

The assertion that Overall and Field, Jackson and Sanderson were the real political philosophers of the time is not, of course, quite true. Actually, before 1640, the mind of a much greater thinker, Thomas Hobbes, must have been at work on the foundations of the State. But Hobbes was extremely isolated and he published his main conclusion only in 1642. Traces of his influence are very visible in 1643; but before 1642 there are none.

Of other writers only the isolated Edward Forset and Thomas Fitzherbert can be said to have produced anything resembling a theory of the State. And Fitzherbert, who never finished his statement, wrote from a Catholic and high Papalist point of view. His book hardly bears, even indirectly, on English controversies and must have been read only by very few.

Of the others the great Francis Bacon was a philosopher who gave no systematic thought to the State, and whose political opinions found only fragmentary and occasional expression. Sir Walter Raleigh's political thinking was equally unsystematic; and he was not a philosopher. The thought of both of them ran on lines that were about, for the time, to be abandoned. Fulke Greville's views are interesting only so far as they can be considered as typical. The refreshing remarks and suggestions of Robert Burton in the *Anatomy*, have little connexion with any controversies of the time unless with that which concerned religious toleration.

All these writers, except perhaps Forset, express and represent aspects of the current thought of their time. But it must be noted that every one of the writers here by name referred to, except Jackson, Sanderson and Hobbes, wrote during the reign of James I. Between 1625 and 1640 there seems to have been considerable change in men's political outlook. It is unfortunate that contemporary literature throws so little light on the nature or the extent of that change.

Chapter II

FRANCIS BACON

IT is hard to deal with the political thinking of Francis Bacon with either assurance or sufficiency. It is as clear that he was not a political philosopher as it is that his thought in general was philosophic. To the State as such and in general he seems to have given very little thought, and all one finds in his writings about it is a solitary essay and a few fragmentary and disconnected observations. He had what may, perhaps, be called a theory of government and, in the closest connexion with it, a theory of the English constitution. But his theory of government does not seem to have been worked out in relation to anything but the England of his own day and is expressed only in a casual and fragmentary manner. It can indeed hardly be distinguished from his theory of the constitution of government in England.

It has been said that it is possible to infer what has been called the political theory of Francis Bacon from his action, from scattered remarks in his writings and from his silences. If we have to try to discover a man's political theory in this fashion, there is, I think, good prima facie ground for supposing that he had none. What the fact suggests is the merest unsystematized opportunism. Inferences from a man's action, it may also be remarked, are rarely satisfactory; since action can generally be accounted for in more than one way and motives are obscure and commonly beyond detection.

It seems to me a misfortune that this great mind was so much occupied with practical politics. But Bacon, unfortunately if not strangely, was desirous of power and of honours; and he was extravagant and constantly in debt. 'I have as vast contemplative ends', he wrote to Burghley at the age of thirty-one, 'as I have moderate civil ends; for I have taken all knowledge to be my province.' He never lost sight of his contemplative ends, but his career can hardly be said to exhibit the moderation of his 'civil' ends. 'Power to do good', he wrote, 'is the

true and lawful end of aspiring';[1] and it seems to be true that he desired power mainly for public ends. But thereby he became entangled in a barren struggle for favour and place. He esteemed himself, he says, to have been born for the advantage of mankind; but much of what was meant for mankind was frittered away in that struggle. Unavoidably he set himself to please and to make himself useful to those who could advance him. He gave much time and even some thought to that unworthy and futile pursuit. His servility, on more than one occasion to Buckingham, is painful to read of. For King James himself it is, indeed, possible that Bacon felt sincere respect. For James was a man of some learning and one whose services to learning were considerable.[2] Yet it is a poor excuse for the gross flattery Bacon offered him to say that it was altogether conventional and not altogether insincere.

Incomparably the most important events of the reign of James I were, in my view, the publication of the authorized version of the Bible and the publication of the Shakespeare first folio. That of the philosophical works of Bacon may claim to stand next. 'It is a strange desire', he says, 'to seek power and to lose liberty.'[3] But that is what he did. His political activities produced nothing of real importance. He attained 'great place' and found himself powerless in it; and he should have known that it would be so. From about 1610 he frequently acted as a confidential adviser to the King. He became, successively, Attorney-General, a Privy Councillor, Chancellor and a peer. But he never seems to have been understood or even trusted. For all his subservience James must have felt sure that his mode of thought about politics was radically unsound. However highly he might think of the King's learning it was evident that he had no firm belief in his divine commission. When he told the King that nothing could bring him to disagree with the profound philosophy of *The Trew Law of Free Monarchies*, even James himself can hardly have been deceived.

[1] Essay, 'Of Great Place', 1612.

[2] His death was felt as a serious loss at the Universities. A curious collection of Greek and Latin memorial verses entitled *Dolor et Solamen* was published at Cambridge soon after it. See Mullinger: *History of Cambridge Univ.*, vol. III, ch. 1. Cp. also Heylyn's eulogy of James in *Cyprianus Anglicus*.

[3] Essay, 'Of Great Place'.

It seems that Bacon was only able to give a distracted and intermittent attention to the nature of the State and its government. His political thinking was quite unsystematic, and his expression of it incidental. Much of his thought remains obscure. It is clear that he gave a good deal of attention to the writings of Machiavelli and that he found them highly suggestive. Suggestions from them are conspicuously numerous in his essays. Not, however, that he was in any real sense, a disciple of the Florentine. He seems to have had little belief in the value of that popular government which Machiavelli rated so high. But his method of approach to the problem of government was much like Machiavelli's. Like him he saw government primarily as an art, and as an art of great difficulty.

Bacon, it seems, had a theory of government but no theory of the State. There appears to be, here, an implication that his thought must have almost completely separated the government from the thing governed. Yet he was perfectly aware of the danger of creating discontent. A ruler, he knew, needs to be in close touch with popular grievances and desires. For all that, one is tempted to say that he thought of governing authority as of a power external to society, acting upon it. The business of the ruler was to give men what they needed, whether they knew it or not, and what was good for them, whether they liked it or not. But whether this truly represents Bacon's mode of thought about the State, there is not, I think, sufficient evidence to show. His fragmentary writings seem to suggest it; and we ought not to say more. Guesses at the content of a mind like Bacon's are almost as foolish and presumptuous as censure.

Bacon had quite definite notions as to what, in England at all events, government should be doing. Government, he either says or quite distinctly implies, should open up trade, encourage manufactures, banish idleness, waste and excess, set itself to improve agriculture, regulate prices, and do all this and many other things at as low a rate of taxation as may be possible. 'Above all things good policy is to be used, that the treasures and monies in a State be not gathered into few hands. For otherwise a State may have a great stock, and yet starve; and money is like muck, not good except it be spread.'[1]

[1] Essay, 'Of Seditions and Troubles', 1625.

Learning should be advanced by endowment and the foundation of colleges and of libraries.[1] Religion has to be settled with the least possible friction. Princes, it is added, must also 'keep due sentinel that none of their neighbours do overgrow so . . . as they become more able to annoy them than they were'.[2]

To do these things may be more or less difficult; but there is one thing that has to be done that is always both difficult and dangerous. Time does not stand still, change is unavoidable, and sooner or later new law has to be made and old law altered. Yet all alterations of law, Bacon insisted, are dangerous. 'What is settled by custom, though it be not good, yet it is fit',[3] and novelties are like strangers, wondered at and not favoured. On the other hand, 'a froward retention of custom is as turbulent a thing as an innovation'.[4] Great caution and intelligence are required to make the necessary readjustments and to make them at the right time. Experiments should not be tried, 'except the necessity be urgent or the utility evident'. 'It were good, therefore, that men, in their innovations would follow the example of Time itself; which indeed innovateth greatly, but quietly, and by degrees scarce to be perceived.'[5] Hasty innovations, he remarks, will profit some, and these thank the time and not the ruler, and will injure others and these blame the government.

There is a danger, Bacon seems to insist, of being misled either by dreamers of Utopias who want to change everything at once or by conservative lawyers, worshippers of the letter, who want to keep everything as it is or as it was. 'All those which have written of laws, have written either as philosophers or as lawyers and never as statesmen. As for the philosophers, they make imaginary laws for imaginary commonwealths and their discourses are as the stars, which give little light because they are so high. For the lawyers, they write according to the states where they live, what is received law and not what ought to be law; for the wisdom of a law-maker is one and of a lawyer is another.'[6] The law-maker should thoroughly understand wherein the law is confused or doubtful, that he may see how to simplify and secure ease in administration. He should

[1] See *Advancement of Learning*, bk. II, 1605. [2] Essay, 'Of Empire', 1612.
[3] Essay, 'Of Innovations,' 1625. [4] Ibid. [5] Ibid.
[6] *Advancement of Learning.*

understand the difficulties of enforcement and know where to mitigate and where to be rigid. He must have a firm grasp of the principles of justice. Of lawyers merely as such Bacon seems to have thought rather contemptuously. They seemed to him to tend to be obstructive to good government: he saw them as useful servants but as bad masters. It is quite likely that, in writing of lawyers, he often thought of Coke.

Bacon was eager to secure good government; he was a man of large reforming projects and sharply aware of difficulties. He seems to have believed that government could do a good deal for the advancement of learning and of science; otherwise his political thinking was little concerned with an unknowable future. Nor, in spite of his strong sense of the danger of innovation, had it much reference to the past. In practical politics he seems to have been impatient of opposition that struck him as stupid and was inclined to cut knots rather than untie them. With such a temperament, and seeing that he had reached the age of forty-two when Elizabeth died and had been brought up in an atmosphere of officialdom, it was very unlikely that he would be persuaded that what Elizabeth had done the new King had no right to do. More or less incompetent James might be; but that proved nothing, and Bacon was of opinion that, at worst, he was less incompetent than was the House of Commons. It may fairly be said that he failed to see that the wisest policy could not be effectively pursued against the opposition of the House, however unintelligent. Like Charles I afterwards, he seems to have underrated the strength of an opposition that seemed to him stupidly obstructive. To him it seemed that there was no doubt about the answer to the main question at issue. For the right conduct of public affairs, knowledge and intelligence were the things above all needed; and the King alone was in a position to secure them.

All things considered it was inevitable that Bacon should become a supporter of the claim of the Crown to disregard law on occasion as utility demanded. He conceived the English constitution much, I think, as Sir Thomas Smith had done. 'All civil governments', he wrote, 'are restrained from God unto the general grounds of justice and manners; but the policies and forms of them are left free; so that monarchies and

kingdoms, senates and seignories, popular states and commonwealths are lawful and where they are planted ought to be maintained inviolate.'[1] There was in his mind no belief in monarchy as a form of government intended by God for all or in any divine commission peculiar to monarchs. Rights at law apart, he seems to have seen the right of an institution as one with its utility. On grounds, so far as I can see, of pure expediency, he gave what support he could to the claims of the Crown.

Perhaps the best illustration of his attitude in practical politics is to be found in the case of Mansell and Whitelocke. Towards the end of 1611, commissioners were appointed to inquire into the condition and administration of the Navy, and were formally empowered to 'give order for the due punishment of the offenders.' Thereupon Mansell, Treasurer of the Navy, consulted James Whitelocke, who gave an opinion that the commission was illegal, as giving power to punish without due trial and course of law. Whitelocke, for doing so, was brought before the Council on a charge of contempt. Bacon appeared against him and maintained that there was nothing in law to prevent the King from empowering commissioners to imprison or to seize the goods of subjects without reference to a court of law. Otherwise, he argued, the King might be disabled from taking necessary action.

It was, essentially, the same argument that was used by Berkeley in the case of Hampden. In one case, as in the other, it was, of course, implied that only a real and urgent need could make such action lawful. Yet perhaps no claim more dangerous to the liberty of the subject was ever made by the Crown than this that Bacon supported. One inclines to think that he should have seen how easily and grossly the power claimed could be abused. But he may well have been aware that, in respect of the naval administration, action more drastic and more severe than could easily be obtained by due process of law was indeed very urgently needed.

In any case his action in this affair was quite consistent with the views expressed in his essay, 'Of Judicature'. *Salus populi, suprema lex*, and 'laws except they be in order to that end are

[1] *Certain Considerations concerning the better Pacification and Edification of the Church of England*, 1640, *Works*, ed. Montagu, vol. VII, p. 68.

but things captious and oracles not well inspired.' When law obstructs action in the public interest, law must be disregarded if the King so decide. Therefore when there is 'matter of law intervenient in business of state' or 'some consideration of State intervenient in matter of law', the judges should take no action till after consultation with the King. It is their function to be 'lions under the throne, circumspect they do not check or oppose any points of sovereignty'. The grandiloquent phrase is highly ambiguous; but Bacon can hardly have meant less than that the judges were bound to take the King's own view of his rights. He argued to the same effect in connexion with the case of commendams. Bacon, it is clear, well understood the nature of the claim the Crown was persistently making. If that claim were ever to be fully established, it would have to be recognized that the King himself was the proper judge of how far his prerogative extended in all matters of executive action.

Bacon's idea of the constitution of the English monarchy was, as a matter of course, that which he had formed under Elizabeth. It has been shown, I think, that it was not capable of anything like exact definition. But assuredly he did not think of the constitution as a thing fixed and rigid. It was the theory of Eliot and Pym that logically involved rigidity. Bacon, on the contrary, seems to have wished to get rid of fixed forms so far as was possible, and to allow to the King a power of disregarding law to an indefinite extent so long as it was exercised in the public interest. What he wanted to see established was an executive with power sufficient to give effect in all cases to its determinations.

I see no sign, however, that Bacon believed the King was rightfully 'absolute' in our sense, or desired that he should be. There appears to be no ground for supposing that he would have been willing to recognize in the King alone a power to make law, or a power to impose direct taxation under normal conditions. If he did indeed desire to see monarchic absolutism established in England, that would be an illustration of the boldness and originality of his thought. But, as a thinker on politics, he was timid rather than bold. It is extremely unlikely that he went so far; and it is certain that he never said so. But he did, occasionally, say things that indicate

a positive dislike of autocracy. Commenting on the story of Typhon, he remarks that princes, sometimes, 'growing tyrannical would engross all to themselves . . . that is, govern according to their own arbitrary will and pleasure'.[1] And the moral is, simply, that such an attempt is likely to produce rebellion. I incline to believe that Bacon thought of absolutism as Sir Thomas Smith had thought of it: as something very dangerous both to monarch and people, and likely to become mere 'tyranny'. He seems, even, to have perceived certain advantages that may attach to 'popular' government. He remarks in one place that the United Netherlands 'in their government excel. For where there is an equality the consultations are more indifferent and the payments and tributes more cheerful.' Here 'equality' refers merely to the absence of a nobility. Bacon evidently associated monarchy with nobility, remarking that 'a monarchy where there is no nobility at all is ever a pure and absolute tyranny, as that of the Turks'.[2]

I may say here that the pamphlet published for the first time in December 1642, under the title *An Essay of a King*, and boldly, if not fraudently, attributed to Bacon, cannot possibly, in my opinion, be of his writing. It is both poorly written and confused. In any case, too, it does not show that the writer regarded the King of England as an absolute monarch in the full sense. There is no distinct statement that the King can make law of his own authority. There are, indeed, few distinct statements of any kind. According to this writer the King possesses two kinds of 'absolute prerogative'. One of them is 'revealed by the law'; and this must refer to the prerogative called ordinary. The other is according to the King's 'private will and judgement'. All that is definitely said about this kind is that the King cannot transfer it to any one; and there follow what appear to be references to Strafford.

Bacon, perhaps, thought of Parliament as a body chiefly useful in keeping the government in touch with the sentiments and grievances of those it represented and in supplying needed miscellaneous information. There is nothing, however, to indicate that he did not willingly accept the established

[1] *The Wisdom of the Ancients—Typhon.* [2] 'Of Nobility', 1612.

principle that law could be made, and direct taxation be imposed, only with its concurrence. But he was conscious of a dilemma. As things stood, executive and directive power were in one hand, and power over revenue in another. It seemed clear to Bacon that Parliament was in duty bound to provide enough money to enable the King's government to be carried on. If it should refuse to do so, the business of government would become extremely difficult, if not impossible. If the House of Commons made the grant of supply dependent on the grant of the concessions it demanded, the King would be forced to give way. There was, therefore, serious danger that control of public policy would pass to the House of Commons. It was in order to prevent that very undesirable consummation that Bacon was ready to advise the King to cajole and manage and deceive the House. Above all it was desirable that the House should not realize how dependent the King was upon its grants.[1] But in all this there is no implication that Bacon would have preferred to give to the King a power to tax arbitrarily.

In just one of his writings Bacon dealt directly with an aspect of the State as such. But the subject of that essay, 'Of the true greatness of kingdoms and estates', is very narrowly limited. In that essay Bacon measures what he calls 'greatness' in terms of military or destructive power; and he correlates this with extent of dominion, by which also, therefore, 'greatness' may be measured. The correlation between military power and extent of dominion has, other things being not very unequal, usually been plainly visible. What precisely the word 'true' in the title of the essay was meant to convey is not clear. But the essay itself suggests that Bacon was merely making inquiry as to facts. He was asking first the question: What are the things which enable a State to enlarge its dominion and so create and maintain what is called a 'great' empire? Chief among them, he thought, was military power; and so arose a secondary question: On what does military power depend?

The questions are Machiavelli's; and so also, in part, is Bacon's answer. To a large extent the essay simply reproduces what Machiavelli had said on the same subject. Military

[1] See Bacon's letter to the King, 1613. Spedding, *Letters and Life*, IV, p. 368.

power depends essentially on the quality of men, not on numbers or money or equipment. A contented and a manly people is the only secure basis it can have. No people oppressed by taxes will be martial, and taxes levied by consent are, in this regard, the least harmful. You need, to be strong for war, an open-air people, a people of agriculturists, smiths, masons and so on; not a sedentary people engaged in indoor work. 'All warlike people', Bacon remarks, 'are a little idle.' He remarks, also, that for any State 'a just and honourable war is the true exercise' needed to keep the body healthy and preserve it from effeminacy and degeneration. 'Howsoever it be for happiness', he adds, 'without all question for greatness it maketh to be still for the most part in arms.' Evidently he was here thinking, like Machiavelli, of the Roman republic, and evidently, too, was identifying greatness with power to enlarge dominion. Whatever Bacon meant by 'true greatness' we certainly cannot conclude from what he says that he saw the extension of dominion as the end of the State or the truly great State merely as one of great striking power. 'A great city,' said Walt Whitman, 'is that which has the greatest men and women.' Bacon might have objected an ambiguity in that remark; but there is nothing in this essay to show that he would not have agreed. I do not think that he meant to say anything at all about the end of the State or ideal 'greatness'. States of great extent and military power were, and are, commonly spoken of as great States. Bacon was simply asking whence this sort of greatness derives.

In the sixteenth century, laudation of the Prince had generally expressed not so much a belief in the superiority of monarchy, as belief in the ability of centralized government to realize its ends. Really effective action by a government over a wide area was at that period practically a new thing. If it had ever existed since the collapse of the Roman Empire, it had been for short intervals only. Emergence or even partial emergence from the anarchic conditions of the fifteenth century, brought with it an accession of faith and hope in the shaping power of government. Whatever men in large numbers desired, whether mere peace and order, or wealth, or justice or true religion or even happiness, they tended to

look to the Prince to supply it. Having in his hands unprecedented powers of regulation and enforcement, why should he not supply all that is wanted? Reformers tended to think that everything was possible to this strange thing, a government able to enforce obedience.

Yet, in reality, the means of action possessed by the Prince were nothing like so great as they were assumed to be. Nor could he, usually, attempt to add to them without encountering serious resistance. His efforts to centralize and co-ordinate were constantly obstructed or resisted in the name of customary rights and privileges in classes or institutions, cities or provinces. Even had his resources been as great as was supposed, he could not have satisfied the demands upon him. In particular the demand for true religion generally meant, practically, a demand for the exclusive establishment of at least two religions. Yet at the end of the century, in spite of all the friction and disappointed exasperation, faith in the transforming power of government action was, at least in England, as strong as ever. For in England there had been far less friction and far less disappointment than in Europe generally.

On reviewing Bacon's scattered and for the most part inconclusive utterances concerning politics, nothing seems to me more striking than the extent to which he shared that faith. He saw clearly that, involved in all new or ambitious undertakings, there was always difficulty and often danger. He saw the need of caution, of gradual approach, of thorough knowledge of the relevant facts, and of intelligence. But he believed that a wise government could so manage that wealth should be spread while it increased, so that poverty and wealth should not grow together. He believed, apparently, that it was possible by governmental action to eliminate wastefulness and idleness from national life. He certainly believed that a wise government could effectively assist those inquiries into nature which promised such great things in the future,

But if all this was to be achieved and religion 'settled' and general contentment established, two things seemed to Bacon absolutely necessary. In the first place the action of government must not be hindered by pedantic insistence on the letter of law or by any customary privilege. Efficient government needs money and only the rulers themselves can know how

much is needed. If Parliament will not grant sufficient, as it is clearly bound in the general interest to do, the money needed must be raised, exceptionally, in unaccustomed ways. So also it may easily become necessary to take, at any one moment, drastic action not sanctioned by law. Bacon was not a believer in pure monarchic absolutism, which he seems to have associated with caprice and lack of order and method. But though Government must be systematic and works best within a convention, there are occasions when convention becomes an obstruction; and when that happens the government, in its wisdom, must decide and act accordingly.

Evidently, then, it is wisdom that is the primary necessity. Bacon was as deeply impressed with the difficulty as with the importance of good government. He was inclined to think that power was only well placed when in the hands of the scholars, students and philosophers, whom he speaks of as the learned. 'It cannot be', he declared, 'but a matter of doubtful consequence if States be managed by empiric statesmen, not well mingled with men grounded in learning. But, contrariwise, it is almost without instance contradictory, that ever any government was disastrous that was in the hands of learned governors.'[1] In any case he felt sure that it would be disastrous to allow the control of public policy to fall into the hands of such a body as the House of Commons. For, visibly, session by session, the House of Commons was showing itself to be at once ignorant, dogmatic and intolerant, subject to gross illusions and so excitable as to be liable to panic, and capable, as in the case of Floyd, of stupid and almost hysterical brutality.

Bacon, accordingly, saw no hope of good government save by maintaining in the hands of the King the determination and control of public policy. It has been said that in thinking thus he overlooked 'the elevating operation of the possession of political influence upon ordinary men'. It is not, however, very clear where we should look for evidence of this elevating operation. It can hardly be found in the bought and sold votes of the eighteenth century. Bacon has, too often, been criticized from a point of view usual, and indeed conventional, in that happy Victorian age when wealth and self-satisfaction increased harmoniously together. The naive dogmatism of

[1] *Advancement of Learning*, bk. I.

that period is hardly any longer possible. Bacon, it is said, failed to see the potentialities for government that were latent in the House of Commons. But it is not quite clear what it is that he should have foreseen. He failed, no doubt, to see that the House of Commons might in course of time become an effective instrument of government in the hands of an, on the whole, very intelligent oligarchy. Or is it the developments of the nineteenth century that he is censured for not foreseeing? It may be admitted that Bacon was not a prophet in politics. Pym may possibly be regarded as a prophet of the Whig oligarchy: he certainly did not foresee the democratic developments that came later. But the truth, of course, is that neither Pym nor Bacon had any true perception of what was coming.

It may, however, fairly be said that Bacon made the same error of judgement that was made by the first Stuart Kings. The death of Queen Elizabeth involved a change greater than any one at the time realized. Whoever succeeded her, a readjustment of the King's position and a change in the direction of giving, for good or evil, greater control of public affairs to the House of Commons, had become simply unavoidable. Bacon did not see that, against the opposition of the classes represented by the House of Commons, the King could not, in the long run, maintain the position Elizabeth had held. And it may well seem to us that he should have seen it. In fact, so far as is known, no one at the time saw it like that; and it cannot have been easy to see. But it is comparatively easy to be wise after the event; though not so easy as it seems to be. But the radical fault of Bacon's political thought did not, of course, lie in his conclusions. It consisted in the fact that his theory, such as it was, of government, had no basis in a theory of the State.

Chapter III

RALEIGH

SIR WALTER RALEIGH, as the world knows, was an extremely active and enterprising person, of the most varied gifts and accomplishments. He found time to go on, perhaps rather hasty, voyages of discovery among political publicists. He discovered Bodin, Machiavelli and Buchanan, Hooker and Sir John Hayward and even Aquinas. He brought back what suited him and disregarded the rest. But in dealing with his booty he shows little or no originality and his thought upon political subjects was quite unsystematic.

None of his relevant writings were published in his own lifetime, except the *History of the World*, which appeared in 1614. It seems impossible to determine exactly when the others were written; but all of them appear to date after the death of Elizabeth. Exact chronology, however, in this case does not matter, since there is no sign of any change of view. The opinions expressed are, as one would expect, very typically Elizabethan. They resemble, therefore, the views of Bacon; but they resemble, still more intimately, those of Sir John Hayward.

Raleigh's account, in the *History of the World*,[1] of the origin of politic society is a version of that of Buchanan, with reminiscences of Bodin. After the flood, we are told, men and man's viciousness increased together; and as this process went on, obedience to fathers of families and to natural law, 'withered and fell away'. So men came to see that only coercive government could save them from a miserable anarchy. 'These arguments, by necessity propounded and by reason maintained and confirmed, persuaded all nations . . . to subject themselves . . . to magistracy.' The earliest magistrates were autocratic; but the arrangement did not work well. Laws therefore were invented in restraint of the magistrate; and so limited monarchies came into existence. And having gone thus far with Buchanan, Raleigh adds, like Hayward, that it

[1] *History of the World*, bk. I, ch. IX. *Works*, Oldys and Birch, II, pp. 340, etc.

was God who made men see their need of government, and that it was, therefore, God who 'by His eternal providence . . . ordained kings'. A little later, remembering Bodin, he remarks rather confusingly, that 'cities and citizens joined together and established laws by consent, associating themselves under one government'. In this manner were formed commonwealths, 'the same being sometimes governed by kings, sometimes by magistrates, sometimes by the people themselves'.

Raleigh, evidently, sought to combine the information acquired from his various authorities. Yet to him personally this talk about origins must, it seems, have meant very little. It does not in any way connect with his thought about actual governments or types of government. What he says on this matter of origins is, in fact, quite conventional and insignificant. It is more significant that he says nothing definite of any divine preference for monarchy or of any special commission given only to kings. It was ordained that man should make kings: was it not also ordained that they should be governed 'sometimes by magistrates' and even sometimes should govern themselves?

'Whereas there are two powers of the law,' says Raleigh, 'the one directive, the other co-active . . . to the power directive they [princes] ought to be subject but not to that which constraineth.'[1] It is impossible to be sure what was meant. Does 'power directive' here mean the power of making law or does it mean the power of actual law made, somehow, already and perhaps unalterable? What we should above all like to know is how Raleigh thought of the position of the King in England. But his language on the subject is full of apparent inconsistency and real ambiguity.

At times Raleigh wrote as though, in England, the King were an absolute monarch in the fullest sense. 'Kings', he declared, 'are made by God and by laws divine; and by human laws only declared to be Kings. As for the places remembered by the divines and lawyers, which infer a kind of obligation of princes, they teach no other thing therein than the bond of conscience.'[2] The passage might come from *The Trew Law*. Princes 'are to give an account of their actions to God only'. He even descends to the use of one of the silliest of the

[1] *Works*, III, p. 143. [2] Ibid., III, p. 144.

scriptural arguments from the stock of the sixteenth century. King David, on a famous occasion, declared that 'against Thee only have I sinned'. 'Therefore,' says Raleigh, 'the prince cannot be said to be subject to the laws.'[1]

Again, in *The Prerogative of Parliaments*,[2] Raleigh declared that 'the bonds of subjects to their kings should always be wrought out of iron, the bonds of kings unto subjects but with cobwebs. . . . All binding of a king of England upon the advantage of his necessity makes the breach itself lawful in a king; his charters and all other instruments being no more than the surviving witnesses of unconstrained will.'[3]

But the impression derived from such passages is modified and corrected by his language elsewhere. In *Maxims of State* he says that, 'in the English kingdom, the prince hath power to make laws, leagues, wars'; adding, nevertheless, that 'to give a contentment to the other degrees they have a suffrage in making laws'.[4] Unless we are to take the passage as flatly self-contradictory, there here appears the very common notion that while law can only be passed in Parliament it is yet the King who makes law by his assent and promulgation. But Raleigh went a little further than the bare statement of fact. "In every just state', he says, 'some part of the government is or ought to be imparted to the people: as in a kingdom a voice or suffrage in making laws.' So also, if the Prince require to levy taxation, 'the matter rightly may be propounded to a Parliament, that the tax may seem to have proceeded from themselves'. Otherwise, he adds, the people 'may mislike the state or kind of government'.[5] Such misliking he was aware might be dangerous. In the *Prerogative of Parliaments* he advised King James to allow the question of the lawfulness of the 'new impositions' to be settled by the Houses. 'Shall the head yield to the feet? Certainly it ought when they are grieved; for wisdom will rather regard the commodity than object the disgrace.'[6]

This last observation is, I imagine, characteristic of the great

[1] *Works*, III, p. 144.
[2] This appears to have been written between 1605 and 1610. It was published in 1628.
[3] *Works*, VIII, p. 154.
[4] *Works*, VIII, p. 2. *Maxims of State* was first published in 1642.
[5] *Maxims of State*. *Works*, VIII, p. 3.
[6] *Works*, VIII, p. 155.

Elizabethan adventurer. Evidently Raleigh did not think of the English constitution, or of anything else, in terms of law. He thought, habitually, in terms of means and ends. He did not think of the constitution either as fixed in and defined by law or as based on definite principles. He approved, for reasons of expediency, of the custom of making law and imposing taxation only in Parliament; he even thought that in every just State things would be so arranged. But he was no more willing than Sir Thomas Smith had been to say positively that the King could not do this or that. Freedom of action for the executive was to him, as to Bacon, that which it was all-important to secure. It was in the highest degree undesirable, therefore, that there should exist any means of compelling the King to take any particular line of action.

Upon one very important question, much argued over in the sixteenth century, though not in England, Raleigh felt no doubt whatever. He was as sure as had been Cranmer and Latimer that in no case ought the action of the Prince to be forcibly resisted. In phrases reminiscent of the Elizabethan homily 'Against Disobedience', he declared that 'the examples are not to be numbered of God's punishments upon those that have resisted authority by God established and ordained. Neither', he goes on, 'ought any subject therefore to resist the power of kings, because they may not be taxed with injustice or cruelty; for it pleaseth God sometimes to punish his people by a tyrannous hand, and the commandment of obedience is without distinction.' And after all, 'better a tyrannous king than no king'.[1]

In Raleigh's expression of opinions on politics there is certainly much ambiguity; and some of it is probably intentional. Probably he agreed with King James that close scrutiny into the position and powers of the King in England was dangerous and to be discouraged. In *The Cabinet Council*[2] he quotes translated passages from Bodin on the nature of sovereignty; but he did not know what to do with them. Perhaps, like Hayward, he thought that Bodin's sovereignty ought to exist, but could not find it in England. He was sure, perhaps, of only two things: that there should be no absolute restraint

[1] *History of the World*, bk. I, ch. IX. *Works*, II, p. 346.
[2] *Works*, VIII, pp. 37, etc.

of executive action and that there should be no recognition of any right of overt resistance to it. His political opinions were largely traditional and solidly Elizabethan. But there must have been many people in James I's reign who thought as he did, and his views are probably more representative than any lawyer's. Nevertheless his was a view that was passing already. The development of the constitutional conflict, which finally forced men to go back to first principles, was, before long, to make such a view impossible.

Chapter IV

FULKE GREVILLE

BORN as early as 1554, Fulke Greville, first Lord Brooke, is said to have been a close friend of Philip Sidney, held more or less important offices under Elizabeth and James, was made a peer in 1620, and died in 1628. Hardly any of the occasional writings with which he amused himself and his friends were published in his own lifetime. The chief of his literary efforts was published for the first time in 1670 under the title *Poems of Monarchy and Religion.* It was in this composition that he expressed his ideas on politics and government. He amused himself presumably, by expounding them in, at best, very indifferent verse.

The significance and the interest of the *Poems of Monarchy* consist almost entirely in the similarity of the views expressed with those of Raleigh and of Bacon. It is a striking fact that these three so different men, one a philosopher, but all men of the world, should have agreed so substantially. It might be inferred that long experience in public business led naturally to the development of a 'royalist' attitude. But it must be remembered that Raleigh and Greville were both about fifty years old when James came to the throne. They represented a generation and a tradition that was passing away.

In speculation about the origin of government Fulke Greville was, if possible, even less interested than was Raleigh. The little he has to say on the subject is in the highest degree perfunctory. His verses merely confirm the impression one derives from Raleigh, that the speculations of Buchanan and the terminology of Bodin had become current coin among the educated, even though little or no importance might be attached to them. Far more significant is the fact that, again like Raleigh, and like Bacon also, he had practically nothing to say about any divine commission to the King.

Fulke Greville thought not at all in terms of law or of right, but simply in terms of power. His characteristic use of this word is, in fact, the key to his thought. He uses it, again and

again, to signify either the supreme authority or the sovereignty of a State. He saw government not as a thing constituted or conditioned by law, but simply as an exercise of actual coercive power. He did not ask whence this power was derived or on what it was based: it was enough for him that it existed. Everywhere, in the form of a central executive authority, he saw such power existing; and he was really interested only in what he saw as actual.

Over against or alongside of that coercive power there might be customs which restricted or tended to restrict its action. But he seems constantly to imply or assume that whether a ruler may raise taxes without any one's consent is not really a question of law but a question of fact. If the King, or whoever it is who holds coercive power, cannot be prevented from so doing, then to say that he does so unlawfully is nonsensical, since a law without sanction is mere fiction. On the question of how law is made or who makes it Fulke had nothing definite to say: but this question also, it seems, was one of fact only. He speaks of parliaments as 'brave moulds for laws.'[1] But to him the essential fact was that just so far as power could command obedience it could make law.

Almost always Greville was thinking of power as possessed or wielded by a King. The words 'king' and 'power' were for him almost convertible terms. But since he was avowedly writing of monarchy that is only natural. It does not mean that he regarded monarchy as the only form of government either natural or divinely approved. He showed his recognition of the existence of other forms of government by discussing, in a highly unoriginal manner, the respective merits of monarchy, aristocracy and democracy. Monarchy was to him the best and democracy the worst of the three, and the reasons he gives for this conclusion seem to be derived from Bodin.

Whence power was derived, or what law had to say about it, seemed to Fulke Greville to matter little or not at all. What matters is the way it is used. In the main his *Poems of Monarchy* are a treatise on the wise exercise of power. Though he never refers to England directly, it is yet clear that it is of England

[1] *Poems of Monarchy*, Stanza 288. *Works*, ed. Grosart, vol. I, p. 108. All my references are to this edition.

that he was always thinking. In the silence of his study he was giving good advice to kings in general and the King of England in particular. He does not show so strong a sense of the difficulties of ruling as do Bacon and Raleigh, but he was quite aware that government is a tricky business and somewhat dangerous. Man is by nature a factious and fractious creature, for ever discontented and desiring change, recalcitrant to authority and in fact rather like a naughty child. It behoves Power, therefore, to act with circumspection, to be mindful of habit and tradition, and to respect what is customary, even to the acceptance of hindrance.

Fulke Greville saw Parliament as Bacon and Raleigh saw it, though perhaps with less misgiving and a more simple sense of its utility. What he says concerning it is almost exactly what Raleigh said. A wise king, however 'absolute' in theory, will above all have a care

> To cherish those Assemblies of Estate
> Which in great monarchies true glasses are
> To show men's griefs; excesses to abate;
> Brave moulds for Laws; a medium that in one
> Joins with content a people to the throne.[1]

Elections to such assemblies, he says, should be left free, and freedom of speech within them should not be interfered with.[2] It is not the true king but the true tyrant who is afraid of parliaments; and that just because his object is not the public good.[3]

Taxation, he sagely remarks,

> to one from many paid
> Is not from one voice well, but many laid.[4]

The wise king will beware of attempting to raise money arbitrarily, especially if by so doing he is held to be 'enlarging' the bounds of his power. And to this what sounds a very serious warning is added.

> Else shall these kings be easily o'erthrown
> That tax and give the people's with their own.[5]

These, plainly, are but counsels of mere prudence. But while there are things which power should, very carefully, refrain from doing, there are many things which it should set

[1] *Poems of Monarchy*, Stanza 288, I, p. 108. [2] Ibid., I, pp. 110–11.
[3] Stanza 307, p. 113. [4] Stanza 312, p. 115. [5] Stanza 437, p. 158.

itself to do. Greville makes a series of suggestions evidently intended for England. Law is to undergo a sweeping reformation, trade is to be fostered, learning and education to be assisted and religion to be settled. The programme closely resembles that of Bacon and anticipates much of what was, before long, to be attempted.

Most of all Greville insisted on the need of a reform of law. As things stand, he declares, lawsuits are far too protracted and far too expensive. This expensiveness is, he pointed out, unfair to the poor; and that is a serious evil. At present law is a 'mystery', known only to professional initiates. It should be made comprehensible to all in their mother tongue. Lawyers are denounced as seeking only their own profit.

Section IX of the *Poems* is headed 'Of Commerce' and on its importance Greville, like Bacon, was emphatic. The King should do his utmost in all possible ways to stimulate and facilitate trading. He should build bridges and improve communications generally, clear out havens and drain fens. But learning and education are equally in need of the King's fostering care. New schools should be founded. Greville remarks that it is not contemplative philosophizing, like that of the 'wrangling monks', that is wanted. One wonders whether this is evidence of direct Baconian influence or rather evidence of a tendency that was to grow stronger throughout the century.

Before all else, Fulke Greville declared, wise princes will seek to establish their government on a solid basis of religion. There is nothing, he says, so effective as true religion in procuring the obedience of the subject, upon which all depends. The maintenance of unity in religion is therefore of primary importance: 'the wise Prince brooks no new or irreligious sects'. He will be always on guard against the villainous and mischievous activities of the Pope. Equally should he beware of allowing any independence to his own clergy. The clergy should be strictly subordinated to the supreme governor whose agents they are. No reference to 'wrangling questions' of theology should be allowed in the pulpit. Such wrangling should be confined to

> the schools,
> As business for idle witty fools.

From the pulpit people should hear nothing 'but that which seems man's life to mend'. Greville, it seems, would have approved Laud's action in this respect, though Laud could not have quite approved his Erastianism.

Elizabethan orthodoxy, now openly challenged, remained still, under James I, an orthodoxy for officers of the Crown. Bacon, Raleigh and Fulke Greville were in that limited sense orthodox thinkers; but theirs was an orthodoxy that was disintegrating. They represented, it seems, the political opinions of the best types of royal agent and official under the new King. All three set forth, in a more or less fragmentary fashion, a theory of government that was without basis in a theory of the State. Accordingly and of necessity their political thought, so far as it was expressed in writing, is superficial and to some extent incoherent. All three were practical opportunists, and all failed to see that the Tudor monarchy was helplessly crumbling. Yet while they looked to the past for their theory and failed to see the significance of the growing opposition to the Crown, their practical schemes or hopes for reform pointed forward to a near and even to a far future.

Chapter V

JAMES COWELL AND *THE INTERPRETER*

IT is hard to know how to place Cowell. He was an academic jurist but not a lawyer of the common law. At the time his *Interpreter* was published, in 1607, he had been Regius Professor of Civil Law at Cambridge since 1594; a position he held to within a few month of his death in 1611. *The Interpreter* was attacked by the House of Commons in 1610 and subsequently suppressed by royal proclamation. The propositions complained of by the Commons were disclaimed by the King, and represent nothing but Cowell's opinions. But what those opinions actually were does not seem very clear.

In *The Interpreter* the King is said to be 'above the law by his absolute power' and 'above his parliament'. He holds 'all that absolute height of power that the civilians call *majestatem*'. Of the *magna regalia* of sovereignty, 'there is not one that belongeth to the most absolute prince, which doth not also belong to our King'.

These phrases sound formidable and, taken by themselves, would certainly seem to indicate that Cowell was claiming for the King an authority completely unlimited. But even here there are ambiguities. Was it to the King *solus* that these declarations referred? What is the meaning of 'above his Parliament'? Cowell must surely have known that Parliament did not consist of two Houses only.

When he came to the crucial question whether the King had power to make law of his own will simply, Cowell showed a strong inclination to hedge. 'Though', he wrote, 'for the better and equal course in making laws, he do admit the three estates, that is Lords Spiritual, Lords Temporal and the Commons, into counsel, yet this in divers learned men's opinion, is not of constraint, but by his own benignity, or by reason of his promise made upon oath at the time of his coronation.' It appears then, that in the opinion of some learned men the King could make law of his own authority were it not for his coronation oath; though it appears also that, in the

opinion of, presumably, other learned men, he is restrained from doing so only by his benignity. 'For otherwise', Cowell continued, 'were he a subject after a sort and subordinate, which may not be thought without breach of duty and loyalty.' But if, as Cowell himself pointed out, no law can be made in Parliament without the assent of the King, how can that assent make him, in any sort, a subject?

'By the custom of the country', Cowell says in another place, 'he maketh no laws without the consent of the Three Estates.' A declaration under the heading Subsidies, makes the matter no clearer. 'The Prince of his absolute power might make laws of himself: he doth of favour admit the consent of his subjects therein.' But what is it then that in any sense binds him not to make law and tax at his pleasure? Is it the coronation oath, or mere benignity, or favour, or the custom of the country? In his *Institutes* Cowell had spoken of Statutes 'not made according to the Prince's pleasure, but by consent of the whole realm, called together by the King for that purpose'. There is evident confusion.

Rather more explicit is the declaration now following. 'Though it be a merciful policy and also a politic mercy (not alterable without great peril) to make laws by the consent of the whole realm . . . yet simply to bind the princes to or by these laws were repugnant to the nature and constitution of an absolute monarchy.' If this mean that, though the King *solus* cannot, or does not, make law, he cannot be held to be strictly bound by it under all circumstances, it claims no more for him than the Stuart Kings actually and consistently did claim. Did Cowell mean anything more than this when, in another place, he laid it down that, notwithstanding his coronation oath, the King 'may alter or suspend any particular law that seemeth hurtful to the public estate'?

Cowell would seem to have argued from the proper meaning of the word 'sovereign' and the conception of sovereignty as an abstraction. 'The King of England', he wrote, 'is an absolute King: and all learned politicians do range the power of making laws *inter insignia summae et absolutae potestatis*.' Yet he could not but recognize that, practically, in England the sovereign was somehow restrained from making law or taxing at his own discretion. How this could be so or why it was so,

he could not understand or explain. It might perhaps, he thought, be due only to benignity and politic mercy. The confusions and ambiguities of his phrasing, singularly unbecoming to a jurist, indicate that he was really puzzled. The constitution of government in England seemed to him to be incoherent; and all he did was to emphasize that incoherency. His view of the matter was curiously academic, and I know of no one else who took it.

It was with some reason that the House of Commons objected to the expression of such views from a man in Cowell's position. With yet more reason it might have objected to the teaching of such doctrine in the University of Cambridge. As it was, too, the Commons were able to draw from King James a valuable disclaimer. Yet they might, it seems, have safely ignored Cowell. If he lectured and taught as he wrote no very distinct impression was likely to be produced. Nor is there any sign that his views found favour with the younger generation, at any rate among the laity. It seems doubtful whether *The Interpreter* ever influenced any one.

Chapter VI

EDWARD FORSET

In the year 1606 was published a very curious and original book, under the title, *A Comparative Discourse of the Bodies Natural and Politique*.[1] The author, Edward Forset, appears to have been a landowner, a justice of peace and at one time a surveyor in the Office of Works.[2] No other writer of the period before the Civil War went so near to claiming unlimited power for the King in England. That, however, is not actually what Forset did. His book is a glorification not of actual and human kings but of the idea of State sovereignty. Remarkable as it was the book attracted little attention and probably influenced no one.[3]

There could hardly be contrast more emphatic than that between the thought of Bacon or of Raleigh and that of Edward Forset. Philosopher as Bacon was, he yet, like Raleigh, wrote of politics not as a philosopher but as a man of affairs. Forset was in the strictest sense an idealist and was a visionary rather than a philosopher. His vision was of a people harmoniously and with all its powers co-operating for the common good, by virtue of a sovereignty which, however for the moment embodied, is that of the community itself.

Unfortunately, there is a great amount of confusion in this remarkable little book: it is not easy to understand. Forset's eyes were in truth a little dazzled by what he calls 'the resplendence and power of sovereignty'; and he failed, very frequently, to make himself clear. It is often hard to tell what he is writing about. The king, in his *Discourse*, is sometimes an incarnation, and sometimes only a symbol, of that idea of State sovereignty that he contemplated with semi-religious

[1] *A Comparative Discourse . . . Wherein out of the principles of Nature is set forth the true frame of a Commonwealth, with the duties of Subjects and the right of the Sovereign*, 1606.

[2] See *Dictionary of National Biography*. There the name is spelt Forsett; it may be with good reason. I give it as it appears on his title-pages.

[3] Forset was also the author of a pamphlet entitled, *A Defence of the Right of Kings: Wherein the Power of the Papacie over Princes is refuted; and the Oath of Allegiance justified.* This was published only in 1642 but was probably written about 1612. It is distinguished by its moderation, but in no other way; and adds nothing to what we find in the *Discourse*.

awe. Often it is not clear which of the two he is. Yet when he is evidently human, it seems that he is only a symbol and not an incarnation. For, indeed, it is not quite clear that the king who incarnates 'the political soul of the State' can ever be human or a mere actual king. Confusion arises also from the loose use of the word 'sovereign', which in one place signifies sovereign power simply, in another means the personal sovereign, who embodies it, and may refer only to the monarch who, though conventionally the sovereign, yet does not possess full sovereign power.

Forset was superficially preoccupied with that analogy between bodies natural and politic which gave the title to his book. He pursued it into fanciful detail and argued from it without misgiving. But his extreme insistence on it was eccentric rather than original. Not only was the analogy itself very old, but it happened at the time to be rather fashionable. Bacon and Fitzherbert both made use of it.

But Forset's conception of the State and its sovereignty in no way really depended upon the analogy on which he so constantly insisted. Indeed he derived from it only one proposition of any importance in his thought. Just as God, he declares, breathes into the natural body, 'of itself a confused lump, unformed, senseless, witless', a reasonable soul, so does God appoint rulers in the body politic. He infers, that is, that it is altogether a mistake to suppose that a people has any part in the establishment or creation of a sovereign. He does not deny that in a quite superficial sense, popular choice or election may establish a form of government or a monarch. But he declares that in all such cases God takes special measures and 'conformeth the secondary causes to co-operate with him'.[1] Whatever part the people may appear to play, it is always a special providence that determines the event. On the face of it he seems to be saying that whether a king comes to his throne by heredity or by election or in some other manner, he is always, really, directly appointed by God.

A sovereign established by special providences is not necessarily a king. Yet it seems always to have been of 'the most high and sacred order of kings'[2] that Forset was thinking.

[1] *A Comparative Discourse*, 1606, p. 7.
[2] The phrase is taken from the Canons of 1640.

Passage after passage in his book suggests that he always thought of sovereignty as embodied in a person called a king. He speaks of 'anointed majesty'.[1] He declares, on the authority of Euripides as well as of Scripture, that a king may fairly be called a god. 'The Political Soul of the State', he says, 'has councillors who resemble the understanding faculty in a man, and favourites who are like his fancies.'[2] The sovereign head of the State is 'designed, inspired, depending and protected from above'.[3] Sovereignty transfigures the person of a king: 'he is like a little glass all illightened with the glorious blaze of the sun'.[4] An actual king may be a child; he is born, grows and dies; but the king as sovereign is 'ever of a full strength, age and power. Sovereignty never faileth.'[5] 'The resplendence and power of sovereignty in the royal person' reveals itself 'in so great majesty as dazzleth the eyes of all beholders and in so admirable effects, as to transform savageness into civility, repugnances into concord, vices into virtues'.[6]

Such language affords ground for at least suspicion that Forset does not mean all that he seems to be saying. A confusion of thought is strongly suggested. There seems to be a tendency to slip from thinking of the king as a man possessed of sovereign power to thinking of him as sovereignty itself somehow incarnate in the form of a man. Yet, on the other hand, if you think of the king as one selected and appointed to rule by God's special providence, you may, after all, easily believe that he is divinely 'inspired and protected'. And your language may well become extravagant in the effort to express the inexpressible.

But in the case of this strange book the more one reads it and considers it, the stronger grows the doubt as to what the author intended to convey. He is constantly arguing that because the soul is, or does, so-and-so, the sovereign will always actually be, or do, the same. The soul is never idle, he says: 'the sovereign doth incessantly care and labour for the public good'.[7] As the soul cherishes and governs the body, so the sovereign cherishes and provides for the commonwealth,

[1] *Discourse*, p. 21. 'Let not the pure substance of the soul . . . be impurely censured; so neither the dear reputation of annointed majesty.' It is perhaps well to remember here that *majestas* means sovereignty and not a monarch.

[2] *Discourse*, p. 15. [3] Ibid., p. 26. [4] Ibid., p. 33.
[5] Ibid., p. 33. [6] Ibid., p. 34. [7] Ibid., p. 8.

governs it with his wisdom, establishes it with his justice and protects it with his puissance.[1] Evidently Forset's sovereign must always be what he should be.

'In man', says Forset, 'the soul ruleth by reason and in the State the Sovereign governeth by laws.'[2] It is assumed that law is an expression of reason. Just as the happiness of any individual depends on the rational rule of the soul, so all good is derived to the community from the sovereign. 'There is not in the commonwealth any the least sinew for motion, the least vein for nourishment, the least spirit for life and action, the least strength for defence or offence, the least member for use and benefit, which is not replenished with his power and sucketh from this overflowing cistern all his subsistence and performance. . . . Produce me any that is not enforced both by foreseeing reason and after-proving events, to acknowledge all his good whatsoever to be first given and then received unto him, by the force of a well ordered government, out of the circle whereof there can be neither welfare nor safety.'[3]

Forset himself avows that actual kings are not always what they should be. This sovereign of his who labours incessantly for the public good, from whom all good is derived to every member of the commonwealth, without whom there is no welfare or safety, cannot have been conceived as any kind of human being. In such passages, as that last quoted, though he says 'the Sovereign', Forset was clearly thinking of sovereignty itself. Whatever actual sovereigns may do, sovereignty itself does seek incessantly the public good and cannot possibly do otherwise, since it exists in and for that purpose only. The common good, Forset was saying, depends absolutely on the action, and therefore on the recognition, of an unlimited power for regulation, vested somewhere. Such a power alone can give life and motion, welfare and security, to what otherwise would be the senseless lump of the body politic. Such a power can, he suggests, even 'transform savageness into civility, repugnances into concord, vices into virtues'.

It seems, nevertheless, that when Forset thought of sovereignty in England he thought of it as vested in the king. His language is inexplicable on any other supposition. It would, at first sight, seem that he was logically bound to claim

[1] *Discourse*, p. 22. [2] Ibid., p. 4. [3] Ibid., pp. 13–14.

for the King of England all powers, including that of making law of his own motion. But he did not do so. He never, indeed, speaks specifically either of England or its king. But he does ask whether 'the Sovereign' is necessarily an absolute law-maker; and here, evidently, 'the Sovereign' means an actual king. And, having thus come to the practically crucial point, he seems to hesitate and certainly falls into ambiguity.

If sovereign princes, he says, were perfect, all their enactments would be just and right. But, since no man is perfectly wise, those sovereigns govern most prudently who do not make law except with 'consultation and consent' of some choice assembly. Plainly he was thinking of England; and there is a ghost of an implication that, even in England, the King could make law of his own motion simply, if he were unwise enough to do so. That this was his real opinion is made more probable by his speaking, in this connexion, of 'that absoluteness of sole power in law-making, which by some . . . is colourably claimed to be original and hereditary in monarchies'.[1]

Yet, for whatever reason, Forset stopped short of asserting that the King in England was 'absolute'. All he positively asserts is that the King is wise in not trying to make law of his own authority; and prudently he leaves it doubtful whether he has a right to do so. It is possible that he was afraid to go farther; but there is no positive reason to suppose so. His conclusion is, at best, lame, but it is not illogical. Forset, after all, was not logically bound by his own assertion to claim power to make law for the King simply. It is impossible to suppose that he doubted that law-making is a function of sovereignty. But he might well doubt whether it was incarnated in any particular person who happened to be a king. The actual king, it appears, is always a symbol of sovereignty but he need not fully possess it even though called 'the Sovereign'.

Forset does not ask how or why his sovereignty came into being. Except for the vague assertion that God breathed into the inert body politic a soul which is sovereignty, he has nothing to say on that point. But he devoted the latter part of his treatise to what may fairly be described as a discussion of the main function of sovereignty and added warnings and

[1] *Discourse*, pp. 16, 17.

recommendations. In this rather indirect manner he expressed his idea of what the commonwealth should and might be.

There are, he says, four classes of people quite necessary to the well-being of any community. There must be an official class, and a class of workers on the land, and another class of traders, and there must be a learned class, the function of which is instruction.[1] Other classes, such as artificers and clergy, however important they might be, are not simply necessary. But without the four main groups no society can decently exist, and in every society it is desirable to have a 'true and proportionable mixture' of these four 'elements'. Not that any sort of equality is required; on the contrary, equality is a thing that 'nature herself abandoneth'. It is superiority only that wins advancement in a well-ordered commonwealth.[2] Yet the main classes need to be justly balanced, 'so that no one of them can dominate'.[3]

This just balance of essential elements is conceived as necessary to the attainment of that final end and purpose for which government and sovereignty exist. Though certainly not a Communist, Forset was a Socialist of a kind: he was at least a believer in the supreme virtue of a 'totalitarian' State. A commonwealth, he explains, is not so called because wealth should be in common, 'but because the wealth, wit, power and goodness whatsoever of every particular person, must be conferred and reduced to the common good'.[4] Every one in fact, under that social contract which is to be, will give himself and all that he has, entire to the public service. 'Loose, idle, vagrant and unprofitable people' will not then be tolerated. Those must be compelled to work usefully who will not work without compulsion.

To secure the harmonious co-operation of all classes and the self-devotion of every individual to the common good is the main and the essential business of the sovereign. That, it seems, is indeed what sovereignty exists to do. Forset seems to have had no doubt that this could be done and, indeed, to have thought that it must be done if ruin were to be avoided. For, if it be not done, 'how could any hope be conceived but that the difference of poor and rich, vulgar and noble, ignorant and learned, industrious and such as take their ease, must

[1] *Discourse*, p. 38. [2] Ibid., pp. 45, 46. [3] Ibid., p. 38. [4] Ibid., p. 48.

needs . . . subvert the stability of the State?'[1] Yet he does not tell us how the wonderful change is to be effected, except that it is to be brought about by 'prudent policy'. We cannot but wonder whether prudent policy may include the more or less forcible suppression of criticism and the enforcement of an official political orthodoxy. Apparently, to Forset, it did not. Laxity and feeble lenience in government is, he says, an evil; but so also is the restriction of 'such lawful liberty as nature requireth and reason denieth not'.[2] Of the two, he adds, excessive liberty is better than excessive restraint;[3] for the most pernicious disease from which a State can suffer is popular discontent.[4] He seems to have assumed the existence of such a high degree of unanimity as would make possible the perfect co-operation of all to agreed ends. Yet it is hard to see how he could have believed that any such thing existed.

It is evident that Forset was, after all, inclined to play for safety. Like Bacon he insisted strongly and at length on the dangers of innovation; and indeed what he said on the subject is almost exactly what Bacon said later. Accustomed things should not lightly be changed even for the better, 'daily usage apting the one unto our liking . . . where the other, though in reason it may seem more applicable, yet is distrustfully entertained'.[5] The greater and the more rapid the change, the greater the danger of friction. 'When we are disposed to alter anything, we must let it grow by degrees.'[6] All alterations, he declares, however much for the better, are harmful 'at their first entering' and need long trial 'for their gaining of authority and acceptation'.[7]

Towards the end of his book Forset makes the astonishing assertion that as the business of the body is to preserve and content the soul, so every part of the body politic should labour to content the sovereign and make him happy. 'The Prince's contentment must be the happiness of the subject and the subject's welfare the security of the Prince: and so shall the Commonwealth be completely blessed.'[8] Whatever exactly he meant by this, of one thing Forset felt perfectly sure: that the 'deadliest and most detestable' of all crimes possible is rebellion

[1] *Discourse*, p. 39. [2] Ibid., p. 43. [3] Ibid., p. 44.
[4] Ibid., p. 63. [5] Ibid., p. 64. [6] Ibid., pp. 64–5.
[7] Ibid., p. 65. One is inclined to wonder whether Bacon had read the book.
[8] Ibid., p. 96.

against the sovereign.[1] Upon sovereignty and obedient recognition thereof the welfare of society depends absolutely. This is his main practical conclusion; and it is in fact about all that he says that had any immediately practical bearing. Apparently he thought that government, being the only check on disorder, must needs always be good. He conceived that, as Ferne was to argue in 1643, there can be no attack on the sovereign which is not an attack on sovereignty itself.

It might be supposed that Forset's conception of state sovereignty was derived from Bodin, but his book rather suggests that, by some obscure process, he derived it from Plato. To Plato he several times refers, but never to Bodin. It has, too, been pointed out that to some extent Forset anticipates Hobbes. Hobbesian certainly is his conception of sovereignty as absolutely necessary to welfare and security, and his practical conclusion that rebellion cannot be justified. But the resemblance is quite superficial. In substance as in method the thought of Forset differs fundamentally from that of Hobbes. His king is evidently nearer to the philosopher king of Plato than to the sovereign of Hobbes, and his sovereignty seems to resemble that which existed in Plato's Republic. Forset's sovereign appears to exist essentially to organize perfect co-operation for the common good; and his chief attribute is wisdom directed to common good. Evidently the conception is Platonic rather than Hobbesian. But between Hobbes and Forset no comparison is profitable. Forset's thought is full of confusion and of ambiguity. He seems often not to have known what he was writing about; he was capable of writing what looks like mere extravagant nonsense. He certainly failed to present anything like a complete and coherent scheme. But Forset suggests far more than he says and more perhaps than he intended to suggest; and it is in this suggestiveness that the virtue of his book consists. It is almost as full of interesting suggestion as it is of confusion. Forset alone of the writers whose work was published before 1642 gives us something like a theory of the State, as distinct from a theory of government. Hobbes apart, he was, I think, the most original and distinguished of the political thinkers of the period 1603 to 1642. That he was very little

[1] *Discourse*, p. 51.

known in his own day, and almost unknown later, is irrelevant to this valuation. High political or social station may give a momentary importance to the crudest and most superficial thinking; but in the history of thought it is only thought that counts.

Chapter VII

THOMAS FITZHERBERT

THE *Treatise concerning Policy and Religion* of Thomas Fitzherbert, published in 1606, was eccentric only in the sense that the views expressed lay altogether outside the lines on which English thought was moving. Born in 1552, Fitzherbert had left England in 1582 and had never returned.[1] He was not only a Catholic, therefore, but one who had long been resident in Catholic countries. From a Catholic point of view there was nothing at all eccentric about his book. But to the Protestant English of James I's time his whole argument was pointless, or pointed only to an absurdity. It had no bearing whatever on the controversies and preoccupations of the mass of English people. It attracted, consequently, little attention and can have had no appreciable influence. Yet, though without significance in the general movement of thought in England, his book is by far the most original of the writings of English Catholics under James I. Almost all such writings were either attacks upon the English Church system or in defence of Papal claims. Fitzherbert was, indeed, a thoroughgoing Papalist,[2] and had his book ever been completed it must have developed as a defence of the claims of the Papacy. But, as its title shows, what we have is only the first part of a book that was never finished.[3] The practical conclusion which it clearly enough indicates was never worked out. As it stands it is a fresh and vigorous and unconventional though incomplete exposition of what may be called a theory of the State.

Fitzherbert's main proposition is that 'the imbecility of man's wit' is such that, without the guidance of religion and the grace of God, he can never know what is good for him or manage his life tolerably or even find out what he wants. He has a

[1] From 1618 to 1639 he was rector of the English College at Rome. He died in 1640.

[2] He wrote in support of the Pope's claims and action in the matter of the oath of allegiance. See his *Of the oath of Fidelity and Allegiance against the Theological Disputations of Roger Widdrington*, 1614. For Widdrington, see II, 6.

[3] The full title reads: *The First Part of a Treatise concerning Politics and Religion.* No second part appeared.

preposterous notion that he is a clever and self-sufficient fellow; but actually, left to himself, he makes the silliest mistakes and blunders into catastrophe. The wise man is he who weighs well 'how little all that he knoweth is in respect of that which he knoweth not and how uncertain all human knowledge is'.[1]

Naturally, then, when men come to the business of ordering the affairs of a commonwealth they prove quite hopelessly incompetent. For this is a business 'so mutable, so intricate . . . so subject to accidents impossible to be foreseen . . . and hanging upon so many grounds', as to be extraordinarily difficult.[2] Like the body of a man, the body politic is 'compounded of contrarieties' and the conflict of its discordant humours tends constantly to destroy it.[3]

In his seventh chapter Fitzherbert dilated upon 'the imperfection of all political science'. In other sciences and arts real progress is made; they are even, he says, 'brought in time to perfection'. But in the politic science there is no progress and no finality, for nothing has really been discovered. After all the philosophizing and dogmatizing everything remains disputed and uncertain. The 'rules and precepts' of political science were indeed, he declares, laid down many hundreds of years ago. But how they shall be applied is always dubious. How else could it be? How can the ruler judge and determine what is for the good of the people he rules, when he does not know even what is good for himself?

The end of law-making, it is well said, is the establishment of virtue in the community. But to that end mere man-made law is desperately inadequate. Law cannot make men virtuous and in actual fact influences them but little. The law men tend really to obey is the 'carnal law', that bids each man seek his own good and pleasure without regard to others. Man, according to Fitzherbert, is not only feeble-minded but radically selfish and vicious.[4] Education might perhaps do something to better his disposition; but not, anyhow, very much. However that may be, most people cannot afford to give their children the education required and, in any case, the number of people capable of training children in virtue

[1] *Concerning Policy and Religion*, ch. I, p. 3.
[2] Ibid., ch. VI, p. 44.
[3] Ibid., p. 45.
[4] Ibid. ch. IX.

is deplorably insufficient. In commonwealths void of true religion, he remarks, there are none such at all.[1]

What we call accident or luck, Fitzherbert declared, is of course nothing but God's providence at work. And in the affairs of the world accident plays a great part. On this factor success in war, and indeed success in any undertaking, depends absolutely. When all these things are considered, he concludes, it becomes evident that man's unaided reason is utterly inadequate to the conduct of his own affairs or the government of commonwealths. True religion and divine guidance are absolutely needed. True wisdom fears God and keeps His commandments and men who have such wisdom walk far more safely in all their ways than the craftiest and wariest of worldlings.[2]

Towards the end of his treatise Fitzherbert digressed into criticism of what he imagined was the teaching of Machiavelli. It is curious to note that not only did he, as was usual, attribute to the Florentine opinions he never held, but that his own declared views on certain points were substantially Machiavellian. He insists that if a prince possesses military force, governs justly and has the affection of his people, he will be as secure as possible.[3] Such was also Machiavelli's opinion. But as to the Machiavellian assertion that it is right for a prince to act 'wickedly' rather than allow the State to be ruined Fitzherbert denied that such an alternative could ever occur. Success and failure, he insisted, depend on the will of God; and whatever be that will, the doing of wickedness can only make matters worse.[4]

So we reach the conclusion of the whole matter: 'the necessity of true religion for the conservation of state'.[5] Had the contemplated second part of the book ever been written, it would no doubt have been devoted to showing that the supreme political necessity for all commonwealths is the acceptance of the guidance of the Holy Catholic Church.

[1] *Policy and Religion*, ch. X. [2] Ibid., ch. XXVIII.
[3] Ibid., ch. XXXIV, p. 407. [4] Ibid., ch. XXXIV, p. 444. [5] Ibid., p. 455.

Chapter VIII

ROBERT BURTON

FROM the writings of politicians and lawyers, propagandists, zealots and divines, it is refreshing to turn to those of a man who cared for none of these things, who had no axes to grind, and no hope of assisting in any kind of reformation. Such a man was Robert Burton of Christ Church and the Bodleian. He was, assuredly, what is called an eccentric. He stood far more completely aloof from the political and religious conflicts of his day than either Forset or Fitzherbert.

Born in 1577, Burton was elected a student of Christ Church in 1599 and there he lived until his death in 1640.[1] No man can have had less direct knowledge than he of the practical politics of the time; few can have had so little actual contact with different kinds of men. He must have lived almost entirely in his study and in the Bodleian Library. But he learned a great deal about mankind there; and his penetrating shrewdness and slightly fantastic humour inspire regret that he has told us so little, even indirectly, about his views of the public affairs of his age.

Burton's *Anatomy of Melancholy*, a unique book still studied and loved, if only by a few, was the work of his whole life. It may be said that after its first publication in 1621, he spent the rest of his life in revising it. Edition followed edition with additions and corrections.[2] The definitive edition of 1652 was printed from a copy which contained his very latest corrections.

Burton was vastly interested in mankind and delightedly amused by its foibles and follies, its absurd beliefs and practices, its strange inconsistencies, its infinite variety and by what he saw as its unchanging nature in a superficially changing world. The spectacle aroused in him neither bitterness nor desire for a betterment he conceived as fundamentally impossible. Hardly another thinking man of his time can have been so little concerned or affected by its political and religious

[1] Burton, it has to be remembered, took orders and actually held two livings simultaneously, one of them in Leicestershire.

[2] The editions of 1624, 1628, 1632 and 1638 represent continuous revisions.

controversies. Unfortunately, in the vast miscellany of his book, with all its 'fine confused feeding', there is little to our present purpose. But in his Preface, headed 'Democritus Junior to the Reader', Burton has a good deal to say about bodies politic and sets forth a kind of Utopia.

'I will yet,' he says, 'to satisfy and please myself, make an Utopia of my own, a new Atlantis, a poetical Commonwealth of mine own, in which I will freely domineer.'[1] And indeed he domineers so freely that all difficulties disappear. This never-never land of his may, it appears, be anywhere, in the temperate zone or on the equator: it matters not at all. It is, anyhow, to be divided into a dozen or so provinces, each with a capital city at its centre, with other towns at equi-distances about it and no village more than eight miles from a town.[2] These towns or cities are for the most part to be conveniently situated on navigable waters. They are to be laid out with geometrical regularity, round, square or oblong, 'with fair, broad, straight streets' and uniform houses of brick or stone. Each city is to be equipped with 'separate places to bury the dead in, not in church yards'. Each is to have its 'opportune market places', its 'public halls for all societies', its 'engines for quenching of fire' and, unhappily, its own prisons. But his town planning goes much further yet. In every city there are to be 'public walks, theatres and spacious fields allotted for all gymnicks, sports and honest recreations, hospitals of all kinds for children, orphans, old folks, sick men, mad men'. And these hostels are to be 'not built *precario* or by gouty benefactors who, when by fraud and rapine, they have extorted all their lives . . . give something to pious uses . . . at their last end, or before perhaps, which is no otherwise than to steal a goose and stick down a feather'. They are to be 'built and maintained, not for a set number . . . but for all those who stand in need . . . *ex publico aerario*, and so still maintained: *non nobis solum nati sumus*'.[3]

Not only so, but in each city there are to be 'colleges of mathematicians, musicians and actors . . . alchemists, physicians, artists and philosophers . . . and public historiographers . . . appointed by the state to register all famous

[1] Edition A. R. Shilleto. Preface I, p. 109.
[2] Ibid., I, p. 110. [3] Preface I, p. 111.

acts, and not by each insufficient scribbler, partial or parasitical pedant, as in our times'.[1] 'I will provide', he adds, 'public schools of all kinds, singing, dancing, fencing, etc.; especially of grammar and languages, not to be taught by those tedious precepts ordinarily used, but by use, example, conversation, as travellers learn abroad.'[2]

There is to be no waste of land in this despotically well-cared-for commonwealth and there is to be the strictest supervision of the use of it. 'I will have no bogs, fens, marshes, vast woods, deserts, heaths, commons, but all inclosed . . . the richest countries are still inclosed . . . I will not have a barren acre in all my territories, not so much as the tops of mountains; where nature fails it shall be supplied by art: lakes and rivers shall not be left desolate. All common highways, bridges, banks, corrivations of waters, aqueducts, channels, public works, buildings, out of a common stock curiously maintained and kept in repair. No depopulations, engrossings, alterations of wood, arable, but by the consent of some supervisors that shall be appointed for that purpose, to see what reformation is to be had in all places, what is amiss, how to help it, *et quid quaeque ferat regio et quid quaeque recuset:* what ground is aptest for wood, what for corn, what for cattle, gardens, orchards, fishponds, with a charitable division in every village (not one domineering house greedily to swallow up all, which is too common with us); what for lords, what for tenants: and because they shall be better encouraged to improve such lands they hold . . . they shall have long leases, a known rent and known fine, to free them from those intolerable exactions of tyrannizing landlords. . . . Private possessors are many times idiots, ill husbands, oppressors, covetous and know not how to improve their own or else wholly respect their own and not public good.'[3]

Rather oddly Burton remarks that 'Utopian parity is a kind of government to be wished for rather than effected'. Yet, having effected so much, he might surely have effected this also. 'My form of government', he adds, 'shall be monarchical.'[4] But evidently Burton was himself the monarch. He does not tell us how law is made in his commonwealth; and

[1] Preface I, p. 111.
[2] Ibid., p. 112.
[3] Ibid., pp. 112, 113.
[4] Ibid., p. 113.

there was no need to say. He was, I imagine, well aware that he himself was its only possible law-giver.

Certain things, however, concerning the organization of government in Utopia he does tell us. It is to be worked on the principle of giving the tools to them that can handle them. As in Forset's system, office is to be the reward, or the consequence, of merit and open to all. 'As some dignities shall be hereditary, so some again by election, or by gift . . . which, like the golden apple, shall be given to the worthiest and best deserving . . . as so many goals for all to aim at. For I hate those severe, unnatural . . . decrees which exclude plebeians from honours, be they never so wise, rich, virtuous, valiant, and well qualified. . . . This is *naturae bellum inferre*, odious to God and man; I abhor it.'[1] Judges and all other inferior magistrates are to be appointed only if 'sufficiently qualified for learning, manners, and that by the strict approbation of deputed examinators'. For such judicial posts scholars are to be preferred to soldiers, for 'a scholar deserves better than a soldier'.[2]

However enacted, Burton makes it quite clear that the law of Utopia is very different from the law of England. Utopia has 'few laws, but those severely kept, plainly put down, and in the mother tongue'.[3] It has, also, few lawyers. Bacon distrusted lawyers and thought them generally unfit to govern. But Burton's dislike of lawyers, like Fulke Greville's, was founded on the law's delays, obscurities, uncertainties and elaborations, and on the expense of litigation. 'He that buys and sells a house', he complains, 'must have a house full of writings.'[4] Like Greville, he seems to have assumed that these evils were all due to the greed of lawyers. There is something, he declares, very wrong with a State in which a large number of lawyers are required.[5] But he seems, after all, to think, like Fulke Greville, that it is not so much the law that matters as the manner of its administration. "Where good government is, prudent and wise Princes, there all things thrive and prosper.'[6] The notion seems in one form or another to be common to Bacon and Fulke Greville, Forset and Burton alike.

The organization of the Utopia under Burton's dictatorship

[1] Preface I, p. 114. [2] Ibid., p. 116. [3] Ibid., p. 114.
[4] Ibid., p. 94. [5] Ibid., p. 92. [6] Ibid., p. 95.

assumed a form that may fairly be described as socialistic. 'Poverty', he says, 'begets sedition';[1] and so far as possible, therefore, poverty should be got rid of. Everything in his Utopia is closely and governmentally regulated: not only the use of land and the conditions of its holding, but trade and prices, buying and selling, lending and borrowing, profession and occupation, marriage and even dress. The number of persons engaged in any particular industry is, in every town, somehow to be fixed. Prices are equally to be regulated by government. All trades are 'rated in the sale of wares . . . corn itself, what scarcity so ever shall come, not to exceed such a price. Of such wares as are transported or brought in, if they are necessary, commodious and such as nearly concern man's life. . . . I will have little or no custom paid, no taxes, but for such things as are for pleasure, delight, or ornament, a greater impost.'[2] Discreet men are to be sent abroad to report on on what they find of new inventions and good regulations. There are to be no trading monopolies, 'to enrich one man and beggar a thousand'; and, throughout the country, weights and measures are to be unified.

'I will tolerate some kind of usury', he declares. 'If we were honest . . . we should have no use of it, but being as it is, we must necessarily admit it.' But he allows the taking of interest only to orphans, maids, widows, or such as by reason of ignorance cannot manage their money; which seems quite astonishingly unpractical. No one is to borrow except by the leave of supervisors.[3]

'If it were possible,' declared Burton, for once facing a fundamental difficulty, 'I would have such Priests as should imitate Christ, charitable lawyers should love their neighbours as themselves, temperate and modest physicians, politicians contemn the world, philosophers should know themselves, noblemen live honestly, tradesmen leave lying and cozening, magistrates corruption: but this is impossible, I must get such as I may. I will, therefore, have of lawyers, judges, physicians, etc., a set number.'[4] Anyhow, no idleness is to be tolerated. 'I will suffer no beggars, rogues, vagabonds or idle persons at all. . . . If they be impotent, lame, blind and single, they

[1] Preface I, p. 91. He quotes Sallust's *Catiline*.
[2] Ibid., p. 115.
[3] Ibid., pp. 120–1.
[4] Ibid., p. 115.

shall be sufficiently maintained in hospitals . . . if married and infirm, past work or by inevitable loss cast behind . . . they shall be relieved and highly rewarded for their good service formerly done; if able they shall be enforced to work. . . . As all conditions shall be tied to their task, so none shall be over-tired, but have their set times of recreations and holidays . . . even to the meanest artificer . . . once a week to sing and dance or do whatsoever he shall please.'[1]

Yet other drastic arrangements are made. No one is to carry weapons in any city. No man is to marry until he is twenty-five and no woman till she is twenty. And on marriage there is to be no dowry for the woman, 'or very little, and that by supervisors rated. They that are foul shall have a greater portion; if fair, none at all or very little.'[2] Finally, 'the same attire shall be kept and that proper to several callings, by which they shall be distinguished'.[3]

In this same Preface, Burton makes a number of miscellaneous observations concerning States in general, and England in particular. He quotes or refers to Bodin and Botero. Apart, however, from his description of Utopia, his remarks are for the most part quite commonplace or conventional. But I cannot forbear to quote a passage on the absurdity of war that might, almost, have been written yesterday. 'What', he asks, 'would he [the elder Democritus] have said, to see, hear, and read so many bloody battles, so many thousands slain at once . . . to make sport for princes without any just cause . . . whilst statesmen themselves in the meantime are secure at home . . . not considering what intolerable misery poor soldiers endure. *Flos hominum*, proper men led like so many beasts to the slaughter, in the flower of their years . . . nothing so familiar as this hacking and hewing.'[4]

Worth notice, also, is an enumeration of the unjust absurdities he saw in society as it was. 'To see a scholar crouch and creep to an illiterate peasant for a meal's meat . . . a falconer receive greater wages than a student; a lawyer get more in a day than a philosopher in a year . . . him that can paint Thais, play on a fiddle, curl hair, sooner get preferment than a philosopher or a poet.'[5]

[1] Preface I, p. 118. [2] Ibid., p. 119. [3] Ibid., p. 120.
[4] Ibid., pp. 58–9. [5] Ibid., p. 72.

But he saw no remedy: he was entirely unhopeful. 'The world alters every day; *ruunt urbes, regna transferuntur, variantur habitus, leges innovantur,* as Plutarch observes: we change language, habits, laws, customs, manners, but not vices, not diseases, not the symptoms of madness and folly; they are still the same. . . . Look how nightingales sang of old, cocks crowed, kine lowed, sheep bleated, sparrows chirped, dogs barked, so they do still: we keep our madness still, play the fool still. . . . We are of the same humours and inclinations as our predecessors were: you shall find us all alike, much at one, we and our sons.'[1]

It is, perhaps, significant that in his description of his poetical commonwealth Burton says nothing about religion. But in the much later section of his book, devoted to 'Religious Melancholy',[2] he has a good deal to say that is to some extent relevant here. But it is to be observed that there seems to be no suggestion anywhere in his book that he shares the widespread notion or feeling that religion forms the most solid possible basis for government.

'Where there is any religion', he remarks, 'the Devil will plant superstition.'[3] Burton goes all over the world, past and present, pointing out the diversity of religious beliefs and the general absurdity alike of beliefs and the practices connected with them. He is astonished and amused by the almost universal conviction of men that they alone possess the true religion, and that all others are idolatrous fools or worse. Nowhere does he so strongly remind one of Montaigne as here. And, though he insists that true religion and superstition are totally unlike each other, he altogether fails, or rather does not really attempt, to distinguish between them. In the end he seems to fall into the very absurdity that he jeers at in others. There is no reason to suppose that his profession of belief in the true religion was insincere. But whether his true religion was, in some sense, that of the Church of England or rather that of Lord Herbert of Cherbury, is by no means clear.

Satan's chief agents for the fostering of superstition, are, he declares, 'politicians, statesmen, priests, heretics'. To the statesmen there is 'no way better to curb than superstition, to terrify men's consciences and to keep them in awe: they invent new

[1] Preface, p. 55. [2] Part III, sec. 4. [3] Ed. Shilleto, vol. III, p. 369.

religious ceremonies, as so many stalking horses'.[1] As for priests, 'what devices, traditions, ceremonies have they not invented in all ages to keep men in obedience, to enrich themselves'.[2]

All this, he pointed out, is not a matter for laughter only: it has serious consequences. 'It is incredible to relate what factions . . . have been of late for matters of religion in France and what hurly burlies all over Europe for these many years. . . . No greater hate, more continuate, bitter faction, wars, persecution in all ages than for matters of religion. . . . The Turks to this day count no better of us than of dogs. . . . The Jews stick together like so many burrs; but as for the rest, whom they call Gentiles, they hate and abhor.'[3]

It seems as if he must conclude in favour of some form of legal toleration in religion; and it is this fact that gives to what he says some degree of real importance in the history of English thought. Just so far as Burton influenced others, his influence must, it seems, have been a factor in the development of that tolerance of adverse opinion which is the only solid basis of legal toleration, and, indeed, the only real guarantee of intellectual freedom. But he did not himself draw the conclusion that he made seem inevitable. Some, he says, 'would have a general toleration in every kingdom'.[4] And he cites Castellion and adds, very strangely, 'whose error is confuted by Beza in a just volume'. 'The medium is best', he declares, 'and that which Paul prescribes, Galatians vi, 1.'[5] But it appears that he was not content to restore the erring in a spirit of meekness.

'As Hippocrates said in Physic,' he declared, 'I may well say in Divinity: *quae ferro non curantur, ignis curat.* For the vulgar restrain them by laws, mulcts, burn their books, forbid their conventicles; for when the cause is taken away, the effect will soon cease. Now for prophets, dreamers, and such rude, silly fellows, the best means to reduce them *ad sanem mentem* is to alter their course of life, and with conference, threats, promises, persuasions, to intermix physic. . . . We have frequently such prophets and dreamers amongst us, whom we persecute with fire and fagot: I think the most compendious cure, for some of them at least, had been in Bedlam.'[6]

[1] Ed. Shilleto, vol. III, pp. 377–8. [2] Ibid., p. 381. [3] Ibid., pp. 399–400.
[4] Ibid., p. 433. [5] Ibid., p. 430. [6] Ibid., pp. 433–4.

Apparently, Burton regarded the setting up of forms of religion in opposition to and in defiance of the religion by law established as due to mere ignorance and silliness. The leaders of such movements were to him rude, silly fellows and quite probably insane. Government should suppress such manifestations of ignorance and hysteria; though he suggests that it is a mistake to take them too seriously. But it is impossible to know quite what he meant. Where did he draw the line? There is almost a suggestion that all strong religious conviction is a troublesome folly.

Burton's Utopia is far from being merely absurd. Indeed, what strikes me most of all about it, is the extent to which his recommendations agree with the reforming schemes of Bacon and of Fulke Greville. Bacon and Greville were thinking of what was or might soon become practicable; Burton only of what was desirable. Having an entirely free hand, he was able to indulge in a vision of planned, hygienic cities all of stone or brick, with wide streets and large playing-fields and pleasure-grounds. He imagined a vast and just system of poor relief very unlike that which actually existed. In these directions they could not go with him. All the same he goes with them: he merely goes farther. To all three the condition of law and of legal procedure in England is one of the things that most needs reformation. All three insist that it is the business of government to stimulate and to foster trade, and they all desire governmental encouragement and assistance for education and for learning. All of them, and here Forset must be included, seem to think that, in Burton's phrase, 'where good government is, there all things thrive and prosper'. But, in spite of his partial faith in the possibilities of governmental achievement, what distinguishes Burton radically from these other thinkers, is his robust and cheerful pessimism. External and superficial things, manners and dress, law and custom, could, it seemed to Burton, be changed to an indefinite extent. But, however much government may improve material conditions, there is no hope of any radical and profound betterment. Man does not change. Whatever happens, 'we keep our madness still, play the fool still . . . you shall find us all alike, much at one, we and our sons'.

Chapter IX

THE DIVINES

§ I. SOME GENERALIZATIONS

THE divines of the Jacobean and Caroline periods have been given a bad name so far as politics go. They have been described as teachers and propagandists of something vaguely called the divine right of kings, assumed to be a mischievous superstition. They have been set down as teachers of a doctrine of royal absolutism. It is high time that this erroneous impression should be dissipated. The indictment appears to be based partly on ignorance of their writings and partly on misapprehensions. With a very few and doubtful exceptions, none of them can rightly be said to have taught or believed that the King in England either was or should be an absolute monarch in our sense of the phrase.

That orthodox divines of the time of James and of Charles believed in a 'divine right' in the King is, of course, true. The ambiguity of the term, however, was well understood; though by later writers it seems often to have been unappreciated. It was seen to need explanation. Sanderson's lucid exposition of its different meanings in 1648, was substantially anticipated by Downame, under James I. Sanderson even suggested that because of the misunderstandings to which its use gave rise, it might be better that the term *jus divinum* should never be used with reference to bishops or kings. In any case, belief in the King's divine right implied no particular belief as to the extent of a King's rights in England or elsewhere. The content of the belief was, in fact, largely negative. Nor did the use of the term necessarily imply agreement among those who used it, unless on one point only.

Authority is defined by Sanderson as a power to create obligation. That power was never, so far as I know, conceived by any English divine as unlimited. But it was generally believed, at least among the clergy, that some degree of authority in this sense was vested in the King in England by virtue of a

sort of divine commission. The belief may be said to have been part of the official teaching of the Church of England from the time of Henry VIII. It was embodied as orthodox in the Elizabethan homilies. To most people, perhaps, the doctrine meant little: to the clergy it meant more than to most. Even to them, however, it meant different things and, often, not much. The phraseology used in connexion with it, early became highly conventionalized. God, it was continually repeated, commands obedience to the King, the Prince, the Magistrate. All the terms used are largely convertible. If, instead of King or Magistrate we say duly constituted authority, or even King in parliament, the meaning will usually be the same. It may even be that when a 'divine' says the King, he really means the law. The King, says William Wilkes,[1] chaplain in ordinary to James I, is the representative of God, and his subjects are bound to implicit obedience by God's command. But the whole argument of his treatise is directed to showing that what you are bound to obey is simply the law. The author's contention is that no man is justified in disobeying ecclesiastical law on the strength of his private opinions. He paraphrases Hooker. He makes it quite clear that to him the King stands for the law, conceived as the King's command.

If, then, you are writing of a monarchy, you may say that the King is God's vicar or lieutenant or representative. If you like strong language you may say that he is as God to his subjects, or that he sits in God's throne. Such phrases were used, ordinarily, because it was felt desirable to emphasize as much as possible the duty of obedience to law and to lawful orders. It must be observed that these phrases do not imply a belief that authority is divinely given only to Kings. Nor do they imply that God intended all the world to be under kingly government or that God favours monarchy above other forms. Not infrequently, one or other or even all of these beliefs went along with a belief in the King's divine commission. But this was by no means always, or even usually the case. More often it was simply asserted that monarchy was the most natural form of government, as being nearest to the 'natural' authority of the head of a family. George Carleton, an unusually bold

[1] *A Second Memento for Magistrates*, 1609, pp. 4–5. There is a copy of this at Sion College, but none in the B.M.

and lucid thinker, says that monarchical government arose simply because men were already acquainted with paternal government.[1] Quite certainly none of the resounding stock phrases above referred to, implied any belief in royal 'absolutism'.

Before going further, it may be best to point out a difficulty in the way. It must always be remembered that in generalizing concerning the thought of bodies or groups of people, we are in constant danger of representing it as far more clear cut and precise than, in fact, it was. It may seem, indeed, almost impossible to do otherwise. Particular thinkers may be lucid and exact: the majority of men are not. When we come to the actual texts in which thought is expressed, we find that the writers often say more than they mean and often less. Still more often they do not quite know what they mean. Failing to see the implications of what they have said, they contradict themselves. Thinking of the words of St. Paul or of the King as God's representative, a man writes as though he believed in royal absolutism in the fullest sense; and a page or two later it slips out that he regards the King as unable to make any law except with somebody's assent. Such confusion destroys much of the value of our most careful generalizations. But careful reading of such writers will at least enable us to avoid attributing to them opinions they never held.

What then was positively implied or intended in the assertion of the King's divine right to command? That real authority of his was usually conceived, quite simply, as proceeding from or created by the divine command to obey the powers that be. God, it was endlessly repeated, wills order for man's good; order in society depends on obedience to law; therefore, God has commanded that obedience, and the disobedient are in danger of damnation. To many the assertion of a divine right in the King meant no more than that. But to others and to all the more serious and lucid thinkers among the divines of the period it did mean more. Implicit, for them, in the assertion that God had endowed the King with real authority, was the conviction that no obligation to obedience could be created by the will or the act of man. Obedience, Sanderson insisted, is not really due to the Prince; it is due simply and solely to God. Or, to put the idea more fully, it is God's command that

[1] *Jurisdiction, Regall, Episcopall, Papall*, 1610, p. 13. For Carleton see II. 3.

gives to the Prince a right to demand obedience as a duty to God. Essential in the theory is the conception that duty is and can be to God only. Human arrangements and merely human commands can create no sort of obligation for any one. The antithesis of the belief in the divine right of the Prince was not belief in limited monarchy or in the rule of law as desirable, but the belief that authority could be derived from popular consent or delegation. The assertion of the divine right of the higher power implied a denial that any adequate foundation for the recognition of a duty of obedience could be found in any theory of delegation or of contract. It was this negative that was the main content of the theory of divine commission alike under James and Charles.

There were, it seems, many who held that moral obligation to obey law existed only as a consequence of the divine command to obey the Magistrate. But for that explicit command real authority to demand obedience would, according to them, have existed nowhere on earth except, perhaps, in the heads of families. But the most lucid and acute of all these professionally theological thinkers did not hold that view. Both Field and Sanderson believed that real political obligation would exist even had no such specific command been given. They conceived that though man's obligation to obey constituted authority was not and could not be created by any act of man, yet, nevertheless, it could be, and was, derived from man's actual need of government and order. Many others, it seems, agreed with them. Obedience, says Lancelot Andrews, is due to the King by natural and divine law. Such unexplained references to natural law were frequent and probably indicated a view similar to that of Field.

In France, before the end of the sixteenth century, men tended to argue that authority divinely conferred could not be conceived as limited by any law or custom of men. How could it be imagined that a community which can give no right to command, which can supply nothing to government but mere force, could by any contrivance limit an authority it does nothing to create? But for England the difficulty hardly existed. The King of England was, indeed, frequently said to make law; but lawyers and divines alike agreed that he could make it only 'in Parliament' or that he made it only at the

request or with the assent of the Houses. It was easy, in England, to think of the King as succeeding to a position defined in law and yet to think of his limited right to demand obedience as created by God's command. For, according to the theologians, neither King nor Parliament could of themselves make binding law. It was even possible, in England, to hold that if the King exceeded his divine commission, overt resistance became lawful. There are but very few traces in English writings before 1642 of any theory of royal absolutism by divine right. I am inclined to regard that theory, in England, as little more than a by-product of the Civil War.

However exactly they be put, the theories of the divines were certainly not concerned with actual powers, legal or extra-legal, in any one State. A divine command to obey constituted authority does not of itself imply anything as to the constitution of that authority. A monarchy may be so constituted that there are certain things which, by law, the King cannot do. In that case obedience need not be conceived as commanded in respect of those things.

Jacobean and Caroline divines alike were little or not at all concerned with particular claims to rights or with legal questions. They were making a serious attempt to find a basis for that right to demand obedience as a duty which society was seen to need. What above all distinguishes them as a group is their preoccupation with the idea of duty. Habitually and as a matter of course they treated the political and even the constitutional problem as a question of the duty of subjects on one side and of rulers on the other. They conceived that all duty is to God and that no merely human authority can create obligation. To their minds the final authority on questions of duty could not possibly be law. 'Human law', declared Sanderson, 'cannot be the adequate measure of moral duty.'[1] To these divines the final authority lay partly in the words of Scripture and partly in man's reason. From Overall to Sanderson the more serious thinkers among them were engaged in developing a theory of the nature of political obligation. They were endeavouring to find an answer to what in fact was, at least for the seventeenth century, the most practically important of all questions.

[1] In his Preface to Usher's *Power communicated by God to the Prince*, 1661.

§2. JACOBEAN DIVINES. THEORIES OF POLITICAL OBLIGATION

Almost all the clerical writers who, under James I, concerned themselves in any way with politics were concerned only with the position of the Church. They were chiefly engaged in defending that position against 'Puritan' attack on the one side and Catholic on the other and in explaining the theory of royal supremacy in ecclesiastical matters. They had, therefore, to deal with the question of the right relation of Church to State. But we are not here concerned with their views on that subject. The controversy about the relations of Church and State requires separate treatment. When Jacobean divines say anything about the constitutional position of the King or his relation to his subjects in general, they usually do so only incidentally and say very little, and that ambiguously. Most of them were content to repeat stock phrases which, long before the death of Elizabeth, had become conventional. Very few exhibit any originality in thought or in phrase. Two outstanding thinkers apart, only one of them requires particular mention here.

Originality of a kind was displayed by William Tooker, a chaplain to King James. He argued at some length that the foundation of all 'superiorities', including that of the distinction between ruler and subject, lay not so much in a felt need of government as in the natural inequality of men. 'Every one', he coolly says, as though it were an indisputable fact, 'is promoted to a higher or lower place according to his deserts and gifts.'[1] Authority is ultimately derived not from the divine command to obey the magistrate but from 'the great diversity of men's gifts.' God, in fact, commands us to obey our natural superiors. To try to establish equality where there is none is impious and absurd. All this is stated quite generally; but the author's main purpose was to show that denunciation of episcopacy and pluralities arose from the envy of incompetence.

More interesting than this talk of superiorities is what Tooker says about the position of the King in England. He had a quite unusual amount to say on that subject. In spite of his chaplaincy, he had no doubt that in England, royal

[1] *Of the Fabrique of the Church and Churchman's Livings*, 1604, p. 5.

authority is definitely limited by law. There are, he says, three kinds of kings. There are kings who are quite absolute; there are kings who are mere figureheads; and there are kings who are 'tied to laws', as is the case in most Christian countries.[1] A king of this last variety is bound by laws he does not make, even though no new law can be made without his assent. He made it quite clear that he regarded the King of England as a king of this sort. Almost, if not quite, all Jacobean divines would have agreed with him.

The political pronouncements of two only of the Jacobean divines have a quite serious importance in the history of thought. By far the fullest and most representative declaration that was made under James I, concerning monarchy and the duty of subjects in general, is to be found in Overall's *Convocation Book*. Just because it is the fuller and the more representative it is more important than the more interesting work of Field.

What is usually referred to as the *Convocation Book* was drawn up by John Overall, then Dean of St. Paul's, in 1606. His draft, with some amendments, was formally approved by the Convocations of Canterbury and York. Almost all that is here relevant is contained in the first of three 'books'. This first book consists of explanatory and argumentative chapters, each followed by a 'canon' formulating the conclusion finally drawn. It was passed as a whole by both Houses of Convocation. In spite of that it never received authorization from the King. It cannot therefore be said to have been officially adopted: its proposed canons never became canons of the Church of England. It never, in fact, actually appeared in print till Archbishop Sancroft published all three books in 1690.[2] But a manuscript of the first book, attested by Bancroft as that which had actually been presented to Convocation, passed into the library of the Archbishop and was known to Laud. Though in no sense authoritative, the propositions of Overall's first book appear to represent opinions general among the clergy.

[1] *Of the Fabrique of the Church*, p. 100.

[2] Under the title, *Concerning the Government of God's Catholick Church and Kingdoms of the whole World*. Book II deals with early Church government, and Book III with the claims of the Papacy. The form of Book II is the same as that of Book I; but no 'canons' appear in Book III. A complete edition was published in 1844 in the Library of Anglo-Catholic Theology.

John Overall was one of the most prominent and one of the ablest divines of his time. Born in 1560 he became Professor of Theology at Cambridge in 1596, Dean of St. Paul's in 1602 and was made Bishop of Norwich in 1618, the year before his death. He took an important part in the new translation of the Bible and was responsible for the revision of the Church Catechism, to which he gave substantially the form it still retains.[1]

The dogmatic and rather comic gravity with which it is repeatedly declared that whosoever disagrees with the propositions laid down in the Canons 'doth greatly err', is explained by the fact that each of them purports to be deduced from the text of Scripture. The politics of Overall, and of Convocation, are 'tirée de l'écriture sainte', as fully as Bossuet's. It was certainly not meant that any one who disagrees with Convocation necessarily errs. The deductions were supposed to be absolutely demonstrative.

To begin with, the theory of Buchanan as to the origin of government is dogmatically set aside as entirely erroneous. Man, it is roundly asserted, was not originally a wild creature living in caves and dens[2] and recognizing no authority till bitter experience taught him the need of it. The deduction from this mistake that 'all civil power . . . was first derived from the people' is, therefore a grave error.[3] Actually, we are assured, God gave authority first to Adam and after him to the patriarchs; and the authority so given was not merely strictly paternal, but a *potestas regia.* Later it is said[4] that this authority arose from 'the law of nature and light of reason', which is rather confusing, but apparently means that the actual grant of authority was felt to be reasonable and expedient. When, in course of time, this *potestas regia* became hereditary, this too was in accordance with the divine will.[5] What God intended from the first was the establishment everywhere of a 'regal mild government', the King being strictly bound to the observance of the divine law.[6] Nimrod and others, however, disregarded that law and so became tyrants.

[1] Slight alterations were made in 1662.

[2] The phrase 'in caves and dens' is obviously Buchanan's '*in tuguriis atque antris*', though Buchanan is not mentioned.

[3] Book I, canon 2. [4] Ch. IV. [5] Bk. I, ch. XVII. [6] Ibid., chs. VIII and XV.

Since those early times, unfortunately, unjust conquests have displaced lawful rulers and wicked rebellions have resulted in the setting up of different forms of government in place of the only form contemplated by God. The practical inconvenience of these aristocracies and democracies are, indeed, so great that they tend always to become some sort of monarchy. Yet it might be supposed that, as a result of these unjust usurpations, the divine gift of authority had, by this time, vanished from earth. That, it was emphatically asserted, is not the case.

'Nevertheless,' we are told, 'when the conquering kings or rebellious subjects have attained their ungodly desires and established any of the said degenerate forms of government . . . the authority either so unjustly gotten or wrung by force from the true and lawful possessor, being always God's authority, is ever, when such alterations are throughly settled, to be reverenced and obeyed.'[1] He doth greatly err who imagines that against any such unrighteously established authority there may on any account be rebellion.

Apparently the authority divinely conferred is conceived as a piece of property. It can be taken from its rightful owner by some one who, after the robbery, has actually got it. He will probably be damned for stealing it, but so long as he has it, you must obey him 'for conscience' sake'. Overall must have meant that authority, being necessary to society, cannot be destroyed by any wickedness of man. God does not allow that to happen. Ordered society rests on a moral obligation to obey the ruler, and that obligation, which is to God, remains always even though the ruler be a usurper.

It is, in this twenty-eighth chapter, clearly implied that after so many conquests and usurpations there would be left on earth no authority to create obligation if God did not recognize usurpers or their successors. But it is plain that could man of and for himself create such authority there would be no difficulty at all. The whole argument involves the assertion that man is, of himself, absolutely incapable of creating real authority. That Overall does not explicitly assert this is probably because it seemed to him too obvious to be worth saying.

[1] I, ch. XXVIII.

It must be observed that, though Overall asserts as positively as possible the damnable wickedness of any rebellion against any government established, he makes no definite assertion whatever as to the extent of the rights of any particular king. I see no grounds whatever for supposing that he thought of the King in England as an absolute monarch. It is most improbable that he did. In his system even a democratic form of government possesses divinely conferred authority. It may fairly be said that he was expounding a theory of the divine right of kings, so long as it is realized that his divine right was not a monopoly of monarchs and did not necessarily involve a power without limit. Fundamentally his theory was not a theory of monacrhy, but a theory of the nature of political obligation. As such it was further developed by the Caroline divines.

It was just to this crucial twenty-eighth chapter that James I objected. He had wanted, it seems, an excuse for supporting the Dutch against their 'usurping' sovereign, the King of Spain. But now it appeared that the rights of a usurper were as divine as those of the most legitimate sovereigns. Probably, however, what James most of all disliked was the implication that rebellion, however impious at commencement, could yet practically justify itself by success. What is the value of a divine right that can be taken over by victorious rebels?

Overall had tried to show that God had intended all the world to be governed monarchically. But man's perversity had, it appeared, partially defeated the scheme. On his own showing, all that had come of it in the long run was a series of aristocracies, democracies and monarchies; not one of which could show a title derived from the original possessor, but all of which possessed the divine gift of authority. We are left with the bare proposition that a right to demand obedience as a duty can only be a gift from God. But what was the value of a declaration that no people has a right to choose and frame its own form of government if any people, by successful rebellion, can secure divine recognition for any form it chooses to set up? James had detected a practical and radical flaw in Overall's construction. But he saw no way of escape. He could only say that Overall had 'dipped too deep . . . among the *arcana imperii*'.[1]

[1] In a letter to Abbot. See Wilkins' *Concilia*, IV, 415.

Of far more ultimate importance than the crude view expressed by Overall was the conception of the basis of political obligation suggested by Richard Field, who had been, it is said, a close friend of Hooker. His book, *Of the Church*, is almost wholly concerned with the position, powers and right organization of the Church and its relation to the secular sovereign.[1] As such it is remarkable and highly significant and will be dealt with later. But, quite incidentally, Field stated a principle so far-reaching and so completely unconventional that one is inclined to doubt whether he meant what he said.

Not only, Field declared, must the commands of the civil magistrate be disobeyed if plainly contrary to divine law, they should also be equally disregarded if plainly contrary to public welfare. In such a case, there must, indeed, be no forcible resistance: we must disobey and take the consequences. We are bound normally to obey law, for the reason that, by divine law, we are all bound to seek the general good of society.[2] For that same reason obedience is only required of us in respect of laws 'profitable and beneficial to the society of men to whom they are presented'.[3] We must, of course, in deciding to disobey, be very sure that we are right; but each man must, necessarily, judge for himself. We cannot be bound in conscience to obey any law except 'so far we are persuaded our obedience is profitable'.[4] We must remember, he remarked, 'that many things are good and profitable if they be generally observed, which without such general observation, will do no good . . . as for one man to pay tribute . . . is no way beneficial to the commonwealth'.[5]

Can Field have been thinking only of law ecclesiastical? If so why did he put the proposition quite generally and why, especially, did he illustrate it by a reference to taxation? Even if he meant his principle to apply only to ecclesiastical law, he was conceding a general right to refuse conformity to State regulation of doctrine or worship. But most important of all is the clear implication that no special divine commission, not

[1] The first four 'books' of this massive work were published in 1606; the fifth and last in 1610, in which year Field became Dean of Gloucester. 'This', said King James of him, 'is a field for God to dwell in.' He was born in 1551 and died in 1616.

[2] *Of the Church*, 1606, bk. IV, p. 274.

[3] Ibid., p. 271.

[4] Ibid., p. 274.

[5] Ibid., p. 271.

even a specific divine command to obey the magistrate, is needed to create political authority and obligation. Men are bound, ordinarily, to obey the civil magistrate because it is every man's duty to promote the welfare of the society in which he lives. Field agreed with Hooker that 'those things without which the world cannot well continue have necessary being in the world.'[1] The sufficient basis of political authority is, in fact, the need of it. Field would not of course have denied that God's specific command of obedience of itself created obligation. He was explaining the meaning of that command; and in doing so he was denying the validity of the essential assertion of divine right theorists of the school of Overall.

§3. LATER DEVELOPMENTS

(a) *Thomas Jackson*

It may be as well to remark here that the utterances of men like Manwaring and Sibthorpe have no place in this section. As things were in the early years of Charles I's reign, the King's action was bound to lead to expressions of extreme views by enthusiastic High Churchmen. The two famous sermons of Manwaring in 1627 were not altogether unrepresentative or altogether unimportant; and the reaction of the House of Commons to them was significant. They will be dealt with in their place.[2] But they have received far more attention than they deserve. In the development of theory as to the nature of political obligation which was the special contribution to political philosophy made by the divines of the period, they count for nothing at all.

Two men, above all others, Thomas Jackson and Robert Sanderson, carried further the development of such theory. Both of them, alike in learning and in intellectual power, stood on a far higher plane than Manwaring. They were representative of the most instructed and intelligent of the High Church clergy.

Thomas Jackson, born in 1579, became President of Corpus Christi, Oxford, in 1630, Dean of Peterborough in 1635 and died in 1640. He seems to have commenced his career as a more or less orthodox Calvinist; but later, like most of the

[1] *Ecclesiastical Polity*, VIII, 4.

[2] See II. 9.

more learned clergy, he developed High Church and Arminian opinions. His *Treatise of Christian Obedience*[1] appears to have been written as a supplement to the *Treatise of the Holy Catholic Church* that he published in 1627.

The *Treatise of Christian Obedience* was a defence of the existing constitution of the Church against all gainsayers. Like Hooker, from whom he seems to have learned many things, Jackson argued that there was no ground on which refusal to conform to the 'rites and ceremonies' established by law could be justified which would not equally justify refusal to obey any civil law. He was compelled, therefore, to consider the nature of the obligation to obey law. He had not very much to say about it, but the difference between his view and that of Overall is striking.

Without government, Jackson argued, society could have no existence. But man desires to live in ordered society. Government therefore is involved in the law of nature, that is, develops necessarily from the need of it. As to forms of government man's reason is sufficient to enable him to decide what form suits him best.[2] Whatever form be adopted represents the will of God for man's good, that is, it exists *jure divino*. Therefore it is that God has forbidden forcible resistance to the action of any properly constituted government, whatever be its form.[3]

Are there any cases, he proceeded to ask, in which disobedience to human law is not disobedience to God? Formally he recognized only one such case: commands inconsistent with divine law must never be obeyed. But here he saw a difficulty and, with excellent candour, he went on to admit that every man must judge for himself in the matter. Every man, he says, 'carries a court of conscience or chancery in his heart', and the decisions of that court must for him be final.[4] No man, he says elsewhere, can be bound to believe what he does not understand or see reason for.[5]

Jackson of course insisted on the absolute need of caution and honesty. You cannot be justified in disobedience to law if you are not entirely convinced that it is right to disobey. He

[1] This appears to have been published for the first time in the edition of Jackson's works that was issued in 1673. Another edition of his works was published by the Oxford University Press in 1844.

[2] *Works*, ed. 1844, vol. XII, p. 194.

[3] Ibid., p. 313.

[4] Ibid., p. 264.

[5] Ibid., p. 303.

insisted, further, that it is a stupid and gross error to suppose that law is not to be obeyed unless warranted by texts of Scripture. To obey the law of Church and State only so far as you believe that it merely enforces the law of God, is not to obey either Church or State, but to repudiate the authority of both.

Jackson's admission that a law might and should be disobeyed when a man's private chancery held that it contravened divine law had a wider bearing than he probably realized. He was of course well aware that men took very different views of what rites and ceremonies were permissible under divine law. It may have been only of this that he was thinking. He perhaps assumed that if civil law were enacted in direct contravention of divine law, the impiety would be manifest to all. But if he thought thus he had forgotten the possibilities of the interpretation of that law of nature which he recognized was as divine as the law of revelation.

It is worth pointing out here that though Jackson defended the royal supremacy in the Church of England, he was not at all concerned to defend any particular claims of the King. The royal supremacy was to him only a particular case of what should exist in all national Churches. In every independent Christian State, he says, ecclesiastical supremacy is vested in the 'supreme majesty of that free state'. He desired to prove no more than that. Still more significant is it that when he comes to discuss the limits of due obedience, the whole question for him is one of obedience to law. In the constitutional conflict in England he would seem to have been quite uninterested; and this is likely to have been the case with High Churchmen fortunate or wise enough to keep clear of politics. Like Field he was far more anxious to lay stress on the rights of the Church than on the rights of the King. In this, I think, he was a very typical High Churchman.

(b) *Sanderson*

It was not till 1647 that Robert Sanderson gave anything like full expression to his political thinking. All his important writings therefore lie, strictly speaking, outside the limits of the present volume. But it would, nevertheless, be absurd to

separate him from the forerunners whose work he continued and completed. His thought is the consummation of that of Overall and Field and Jackson. He gave final and complete form to the theory of political obligation on which, in differing ways, they had been working. It is probable that he concerned himself hardly at all with politics till the results of the Civil War demanded his attention. Even so his thought remained always completely independent of mere circumstance which did not, and could not, affect it one way or another. It must be said also that his various writings show no sign of any change of view or standpoint.

Born in 1587, the son of a Yorkshire squire, Sanderson became Reader in Logic in the University of Oxford in 1608. In 1631, on the recommendation of Laud, who had known him at Oxford, he was made a royal chaplain and in 1642 he became Professor of Divinity in the University. Ejected at the visitation of 1648, he remained in studious obscurity till the Restoration, when he served as moderator at the Savoy Conference and was made Bishop of Lincoln. By that time, at least, he seems to have been recognized as the ablest representative of episcopalian churchmen; and his clear-headed moderation secured respectful attention even from his opponents.

'I carry my ears to ordinary preachers,' Charles I is said to have remarked, 'but my conscience to Dr. Sanderson.' Sanderson was neither a politician in the ordinary sense nor was he, essentially, a theologian. He was essentially a moralist and a casuist. He may well have owed more to those pioneers of casuistry in England, Perkins and Ames,[1] than he did to the Scriptures. All through his life he was preoccupied with the conception of duty. When he at last turned his attention to politics what he evolved was no complete theory of the State and no sort of theory of the English constitution, but simply a theory of political duty.

It was in his *Lectures on Conscience and Human Law*, delivered at Oxford in 1647, that Sanderson first gave serious expression to his views on politics. Further elucidations of his political thought are to be found in the preface he wrote for the edition of Usher's *Power Communicated by God to the Prince*

[1] The complete works of William Perkins of Cambridge, including his *Treatise of the Cases of Conscience*, were published in 1609. The *De Conscientia* of William Ames appeared in 1632.

in 1661 and in his *Judgment in One View*, published in 1663. His *Episcopacy not prejudicial to Royal Power*, published in 1661, but probably written in 1648, has also some importance in this connexion. Sanderson's reputation as a political thinker seems to have been damaged by misunderstanding of a passage in a sermon preached before the King in July 1640.[1] He was at that time, no doubt, anxious to insist upon the absolute wrongfulness of rebellion. The occasion and his desire to be emphatic unhappily led him into rhetoric, which in him is a very rare fault. Though I do not like to suggest anything of the sort in this case, I must remark here that a certain suspicion of insincerity, or at least of wilful over-emphasis, attaches to all sermons preached in presence of the King. Rebellion, Sanderson said, is simply and absolutely wrong. It can be justified for no cause: 'not for the avoiding of scandal; not at the command of any power upon earth; not for the maintenance of the lives and liberties of ourselves or others; not for the defence of religion; not for the preservation of Church or State; no, nor yet, if that could be imagined possible, for the salvation of a soul, no, not for the redemption of the whole world.'

It is characteristic of Sanderson that he should have made his statement of the hackneyed old commonplace so complete as to leave no loophole for those who wanted to have things both ways. But this evidently extravagantly worded passage, taken by itself, gives a completely wrong impression, especially when the words, 'if that could be imagined possible', are omitted. No one at all well acquainted with Sanderson's writings could miss the significance of those badly placed words. It was one of the main propositions of Sanderson's ethics that no sort of good could come of doing anything that was wrong absolutely.[2] You must not do evil, he asserted, that good may come, if only because no good can possibly come of it. If rebellion were wrong absolutely then not only could rebellion never save a soul, it could never preserve liberty or religion or even avoid scandal. Sanderson's lapse into rhetoric confused his utterance. But though he might, on occasion, be rhetorical, he never talked sheer nonsense.

[1] Sermon at Hampton Court, July 26th 1640, *Complete Works*, 1854, p. 298.
[2] See the first of the *Lectures on Conscience*.

The conscience of man, Sanderson declared, is bound absolutely by three things and, secondarily and not absolutely, by a fourth. It is bound absolutely by the law of God revealed in Scripture and by 'the law of God written in our hearts'. It is bound also, not less absolutely, by the knowledge derived inferentially from these two, that is, by the law of reason.[1] Both law of nature and light of reason are 'as truly the law and word of God as that which is printed in our Bibles'.[2] He attributed the Puritan tendency to regard Scripture as the sole rule of life to mere stupidity.

Human law, the law, that is, made by the supreme magistracy, does not bind men absolutely or even, strictly speaking, at all. No mere human power can of itself create obligation for any man. It is only as representing the will of God for man's good that human law is morally binding. 'Properly speaking the magistrate does not oblige the conscience to obey the law, but God obliges the conscience to obey the magistrate.'[3]

Sanderson, therefore, agreed with Jackson that unjust law creates no obligation. But he pointed out that mere defect of intention does not release the subject from his duty to obey. Any law not in itself wrongful must be obeyed, however bad the motive of its enactment. The subject must always obey law if he can conscientiously do so.

The governing principle in all cases and under all circumstances is that the subject is bound to obey the law when the general interest requires his obedience. Only when law is positively injurious to public welfare is there no obligation to obedience. The principle holds good even in the case of a sovereign of doubtful title. It is no part of the duty of a subject to inquire into the title of a *de facto* sovereign. Actual possession is itself a title till a better is shown. Even in the case of a sovereign who is quite certainly a usurper, his commands should be obeyed if they tend to the general welfare.[4]

Mere forms of government were, for Sanderson as for Jackson, the creation of man's own reason and will. No form of government exists, in the strictest sense, of divine right. A thing,

[1] Lecture III, Prelection 5.
[2] *Judgment in One View*, ed. 1663, p. 94. This consists of extracts from Sanderson's other writings.
[3] Lecture III, Prelection 5.
[4] Ibid.

Sanderson explained, is said to possess *jus divinum* in the absolute sense, when it appears that God intended that it should be 'perpetually and universally observed'. 'Of which sort,' he added, 'setting aside the articles of the Creed and the moral duties of the law . . . there are, as I take it very few . . . The preaching of the Gospel and the administration of the Sacraments are two; which when I have named, I think I have named all.'[1] Even in the secondary sense in which he allowed *jus divinum* to episcopacy it did not, in his view, attach to monarchy in particular, but only to government in general.

Forms of government are man's own creation, but the real authority, or power to create obligation, which attaches to all of them, can be derived, Sanderson asserted, only from divine will. In his preface to Usher's treatise he scathingly criticized the theory of an original contract, declaring it to be mere rubbish. All that he there says might have been taken straight from Filmer and has little or no relevance to thought in England before 1642.

It is manifest that Sanderson's thought was hardly at all concerned with the constitution of government in England, about which he says almost nothing. In the preface to Usher, indeed, he remarks that the originally unlimited authority vested in Kings has usually been limited later by law to which the King assented. This, he says has happened in England, where the King, though styled the sovereign, can make law only in Parliament.[2] That, he adds, is an excellent arrangement.

Overall's conception of the duty of subjects had been somewhat crude and superficial. He seems to have based his belief simply on the text of Scripture. Jackson, too, had been greatly preoccupied with Romans xiii, though he treats the King as a symbol of the law. All these thinkers denied absolutely that the will or act of man can create obligation, and all of them therefore asserted that the subject's duty of obedience cannot rationally be founded on consent, contract or delegation. But for Sanderson, as for Field, political authority is not founded simply on Scriptural injunctions. Their edifice would still

[1] *Episcopacy not prejudicial to Royal Power*, 1661, pp. 13–14.
[2] Lecture III, p. 227.

stand had the Epistle to the Romans never been written. It was, in their conception, essentially man's need of government that binds men to obey the magistrate. The consciousness of their need could never enable men to establish a power to create real obligation; but under that law of nature which is divine law, the obligation to obedience is born of that need. The distinction is simple; but to forget it is to fall into confusion. To will aright is to will as God wills and to do right is to do what God wills done. God wills the good of society, and society needs authority. It is, therefore, in the general interest that every man is bound normally to obey the magistrate. Obedience to the magistrate is but one case of man's duty to other men. And just because it is so, there are limits to the duty of obedience. Men cannot be bound to obey law demonstrably injurious to public welfare. If there be a theory which may be called the theory of the divines of this period, it is this and nothing else.

PART II

CHURCH AND STATE

Chapter I

THE POSITION IN 1603

It has been said, with something of exaggeration but with much truth, that, in the quite literal sense of the term, the re-formation of the English Church began not with Henry VIII or Elizabeth, but with the reign of James I. The Tudor sovereigns had freed England from Rome and had nationalized the Church by means of a doctrine of royal supremacy in ecclesiastical causes. But they had almost wrecked the Church in doing so. The reconstituted Church of Elizabeth was constructed and governed with a view to the avoidance of acute friction and without regard to logical coherence or real unity. Its formularies and its law were alike incoherent. There was a wide gap between the Articles of Religion that bound the beneficed clergy and the Liturgy for common use. The law of the Church became a jungle of regulations through which no one could certainly find a way. Nor would the Queen's high worldly wisdom allow to any one sufficient power to enforce strictly what law there was.

The confusion and ambiguity of ecclesiastical law in the later years of Elizabeth was aggravated by her death. There was nothing to show that she had confirmed any canons or injunctions for a period beyond her own lifetime, or even that she could have done so. As to articles and advertisements like those of 1564 and 1583, which she had never confirmed, their legal validity had always been disputable and it could, in any case, hardly be held that they bound her successor. Something had now to be done to codify the law of the Church and to define its position, if it were not to become altogether chaotic and lose all meaning from a religious point of view. All religious parties or groups in 1603 seem to have hoped that James would do something to serve their turn. Even the Catholics had hopes of him. No one seems to have supposed that he would do nothing.

Nor was it only the law and the discipline of the Church that needed reformation. The spoliation it had suffered under

the Tudors had reduced what was probably a large majority of the beneficed clergy to a condition of crippled poverty. From that serious results had followed. A large majority of the clergy appear to have been grossly ignorant or, at least, were too poorly instructed to be allowed to preach. The bishops in 1603, reported that of 8,179 clergy in the province of Canterbury, only 3,352 had degrees and were licensed preachers. A University degree, it must be remembered, did not necessarily mean much: it meant even considerably less than it means now. Decently educated clergy seem to have been habitually referred to as 'learned'.

Under these conditions highly educated men or indeed any men who could be classed as well educated were unlikely to be attracted to the clerical profession. Probably the number of such men entering it would have been minute had it not been possible to hold more than one benefice at once. The pluralities that were common and so often and so ignorantly or dishonestly denounced were certainly mainly the result of the general poverty of livings and the evident need of instructed ministers. They were a bad and partial remedy for an intolerable state of things. Pluralists were most numerous in the southern and middle-eastern districts, and it was there that most of the 'learned' clergy were to be found. 'To desire', wrote Francis Bacon, 'that every parish should be furnished with a sufficient preacher and to desire that pluralities be forthwith taken away, is to desire things contrary.'[1] On this point he was in agreement with Bancroft; and there seems to be no doubt that they were right.

That some sort of reconstruction of the Church was inevitable after the death of Elizabeth was seen as clearly by the party called Presbyterian, Disciplinarian, or Puritan, as it was by Bancroft. They hoped, as he did, that whatever was done would be on the lines they approved. It is necessary here to say that I can give to the word Puritan, used of this time, no other meaning than that it had under Elizabeth. It could only, here, be given a wider meaning by including the Congregationalists. If they be included, the Puritan party was divided into two hostile groups, with aims very different. But the

[1] *Certain Considerations touching the better pacification and edification of the Church of England*, 1604. *Works*, ed. Montagu, VII, p. 93.

Congregationalists were as yet so insignificant in numbers, and so completely without influential backing, that for the present it is simplest to ignore them.

The aim of the Presbyterian or 'Puritan' party was, as ever since about 1570 it had been, to make the Church of England thoroughly Calvinistic and to presbyterianize its organization according to the programme of Travers or of William Stoughton. The establishment of a form of Church which they maintained was prescribed in Scripture was for them the necessary first step towards the realization of a sanctified society rightly ruled by the godly for the glory of God. That the party was, in 1603, numerically very weak there is no doubt. But it had powerful backing. It was supported by a certain number of wealthy and influential landlords and by the governing bodies of a number of important towns. Its strength lay chiefly in a group of counties of the eastern and south-eastern midlands.[1]

The leaders of the party met King James with the misleadingly entitled Millenary Petition.[2] 'We, the ministers of the Gospel in this land,' it began '. . . to the number of more than a thousand of your majesty's subjects and ministers', are 'groaning under a common burden of human rites and ceremonies'. What justification there was for the assertion that the petition represented the views of a thousand people never appeared. There were no signatures. But the petition was astutely framed and its positive demands were deceptively moderate. There was no hint of the main purpose of the party. The petition laid stress on just those weaknesses and evils, the poverty of the clergy, pluralities and the lack of adequate ministers, which Bancroft was most anxious to remedy. For the rest the changes asked for were mostly trivial in themselves. The petitioners asked that the use of the sign of the cross in baptism and of the ring in marriage might be 'taken away'. Confirmation also was to be abolished and the words 'priest' and 'absolution' deleted from the Prayer Book. The surplice was not to be insisted on; no popish opinions were to be taught; no one was to be excommunicated without the consent of his pastor or for 'twelvepenny matters'; and Church

[1] Especially in Suffolk, Essex, Herts, Bucks, Northants and Leicestershire.
[2] Presented May 1603.

music was to be 'moderated'. Every one of these demands had been made under Elizabeth.

In his *Considerations*, of 1604, Francis Bacon advised that the proposals of the petition regarding the ring in marriage, the use of the surplice and the words priest and absolution should be adopted. Rather vaguely he had also suggested that there should be little or no insistence on ceremonial or on opinions concerning Church government. The adoption of such palliatives might indeed have eased the situation a little for a time, but not very much or for long. The real desire of the petitioners was for something far more radical.

The organizers or promoters proceeded to support their main petition by arranging for others to be sent in from different districts. With the assistance of local magnates it seems to have been very easy to obtain signatures for almost any kind of petition. There was really no need that the signatories should have any opinion about its content. From 1603 to 1641 petitions, from any side or quarter, can be taken as expressing little more than the views of their promoters, if even so much.

Before calling the Hampton Court Conference the new King had made it quite clear that he was not contemplating any serious alteration in the 'form and frame' of a Church, 'both the constitution and doctrine' of which he had declared to be 'agreeable to God's word and near to the condition of the primitive Church'.[1] The representatives of the Disciplinarian party at the Conference were placed in an awkward position by the King's pre-judgement of what was really the main issue. They did not dare, and could not be expected, under such conditions, to say what they really wanted. James seems to have received the impression that they really had nothing to say. But in any case it would have been impossible that anything could have come of the Conference. Before it opened James had already made up his mind to rely on Bancroft.

[1] Proclamation of October 1603. The text of this is in Cardwell's *Documentary Annals*, II, p. 62.

Chapter II

THE RECONSTRUCTION: SUBSTANCE AND METHOD

THE new Canons issued in 1604 involved a selective codification of the fragmentary and confused Elizabethan legislation and its commentary in the form of Visitation Articles. Their main purpose was to settle and define the law governing the clergy and, at the same time, to make its enforcement more easy. They were based, especially, on the Injunctions of 1559, the Advertisements of 1564 and the Visitation Articles of 1570. They unified and consolidated the various forms of subscription that had, at different times and in different dioceses, been required of the clergy at induction to a benefice. The first twelve of the new Canons provided that no one should hold benefice in a Church the constitution of which he regarded as antichristian or who believed that in the Prayer Book had been established a 'corrupt, superstitious or unlawful worship of God'. 'This cruel and illegal innovation,' says Professor Usher, 'as this first section . . . has been stigmatized, was in fact neither illegal nor an innovation.'[1] The subscriptions now required at ordination were, indeed, substantially the same as those required by Whitgift in 1583.

There was little that was actually new in the new Canons, but, taken as a whole, they involved a drastic change. Bancroft was acting on the principle that acceptance of some sort of system of belief must needs be a condition of office in any sort of Church that is not a legal fiction. He aimed at constructing a Church that should be logically coherent. Very few religious minds of that time would have been satisfied with a Church of no definite constitution, without either defined law or certain doctrinal position. But Bancroft, consciously or not, was ignoring a primary fact of the situation. Under the Elizabethan system, and equally under that now inaugurated, every member of the community was bound under penalties to be a member of the national church. Attendance at

[1] *Reconstruction of the English Church*, I, p. 376.

unauthorized worship was punishable. Under Elizabeth the uncertainty of the law and the lack of power to enforce it resulted practically in what amounted to a large measure of toleration. It was but reasonable to wish to give some degree of definition to the position of the Church and its clergy. Bancroft and the Disciplinarians alike wished to do so. But if this were done and the slack reins pulled tighter, the position would be dangerously altered. 'I will have one doctrine and one discipline, one religion in substance and in ceremony', King James had declared at Hampton Court. In reconstructing on definite and logical lines a church that was to be all-inclusive, Bancroft was committing himself to that impracticable ideal. If the Church were to remain for long all-inclusive, it must needs remain as formless and incoherent as Elizabeth had kept it. It must, however, be added that, at the moment, no danger was apparent. How little serious opposition from religious points of view was, at the moment, to be apprehended is shown by the smallness of the number of deprivations under the new Canons.[1] None of the leading Puritan divines seem to have been permanently deprived of benefice, and several of the most distinguished among them went completely over to the orthodox fold within the next few years.[2]

At the commencement of the reign of Elizabeth, when the religion of the masses seems still to have been a confused and formless Catholicism, the exigencies of the position had compelled her to work through Calvinistic bishops. The higher clergy had gradually succeeded in giving to the Church a semi-Calvinistic tone. But the number of convinced Calvinists in England can never have been anything but small proportionately. Neither in its liturgy nor in its formal organization was the Elizabethan Church Calvinistic. If its Articles leaned that way, they were yet carefully ambiguous. The bishop might, in official theory, be essentially a royal commissioner; but in the long run official theory mattered little. To the religious the bishop was either much more or was altogether

[1] Bancroft himself put the number of those deprived at sixty; which certainly seems to be an underestimate. Professor Usher reckons that there were at most a hundred. On this, as on other points, Puritan statements should not be accepted without confirmatory evidence.

[2] Among these were Downame, Sparke and Bedell.

objectionable. Thoroughgoing Calvinists tended to go into opposition. On the other hand, the inchoate Catholicism of the masses gradually disintegrated altogether and for the most part disappeared. But the old forms survived to such an extent that, within them, a new religion of the old type could develop. It had begun to appear before the death of Elizabeth.

If there were any feature of the Elizabethan Church that had by 1603 become in any sense popular it was the Liturgy. It is no doubt true, and it is a fact of fundamental importance, that the actual mass of the population was indifferent to, if not wholly ignorant of, the controversy that centred about the conception of the Church. It would seem, indeed, that few even of the more educated of the laity felt any acute interest as yet in the controversies that raged among the clergy. If the mass was not exactly irreligious, its religion was not that of any party. All the ponderous argumentation about ceremonies and Church government and right doctrine went unheeded by most people.

A refreshing glimpse of the sound doctrine prevailing among the uninstructed is given us by Josias Nichols in his *Plea of the Innocent.*[1] He tells us that, marvelling that his preaching was so little regarded in his parish, he resorted to questioning his four hundred communicants. 'I asked them of Christ', he says, 'what he was in his person, what his office; how sin came into the world . . . and lastly whether it were possible for a man to live so uprightly that by well doing he might win heaven. In all the former questions I scarce found ten in the hundred to have any knowledge; but in the last question scarce one but did affirm that a man might be saved by his own well doing; and that he trusted he did so live that by God's grace he should obtain everlasting life by serving of God and good prayers.'[2]

This state of affairs was characterized by Nichols as 'most lamentable' and as an awful example of the effects of non-residence and lack of sermons. People of this mind seemed to him to be practically atheists. It probably represents popular religion at its best; and, however it be characterized, it was

[1] Published in 1602. Nichols was then rector of Eastwell in Kent. He was deprived in 1603.

[2] *Plea of the Innocent*, pp. 212–13.

certainly not Calvinistic. The Church of Bancroft might in the long run have proved unacceptable to English people; but it cannot be said to have actually done so. A Puritan construction on the pattern of Travers and Stoughton would certainly have proved unacceptable; and actually it did prove so. Military victory did not make possible the establishment in England even of a highly adulterated form of Presbyterianism. Those who, in 1603 and later, imagined that what people in general wanted was a move further in the direction of Calvinism seem to have been utterly mistaken. Under James I the main tendency was, I think, towards the popular acceptance of such a Church as Bancroft conceived. When the Restoration came it was substantialy the Church of Bancroft that was restored. It is true, also, that it could be given stability only by a measure of toleration.

But at the root of the reform of James and Bancroft was a weakness that almost proved fatal. It was a flaw far more immediately important than the fact that it was, in the long run, impossible to maintain by compulsion an all-inclusive national Church. It lay, not in the substance of the new regulations, but in the mode of their enactment. The Canons of 1604 were issued on the authority of the King and of Convocation only. They were based, therefore, on the theory that the King, acting with Convocation, could make law for the Church without reference to Parliament. There was something to be said in support of that theory. The precedents were chaotic: they proved nothing positive. The Canons of 1571 had been issued on the authority of Convocation acting alone: those of 1597 differed only as having received confirmation by the Queen. The Advertisements of 1564 had proceeded from the authority of the Commissioners for Causes Ecclesiastical. The Articles of 1575 rested solely on the authority of the Queen herself. Whitgift's regulations for ecclesiastical courts in 1587 and the Articles of 1593 had been issued on the mere authority of the Archbishop. There was certainly no ground to be found for saying that ecclesiastical law could only be made in Parliament. There was some ground for saying that it could be made by Convocation acting alone or even by the Archbishop. So far as precedent went, it might have been held that any one the sovereign allowed to do so could make law for the

Church. No one, however, actually announced that view of the matter.

Here, as elsewhere, Bancroft was trying to unravel and simplify a confused tangle. A settlement of the question as to where power lay to make law for the Church was evidently greatly needed. It had, perhaps, mattered little who made it, so long as power to enforce it was insufficient or lacking. But if the law governing the Church was to be made clear and coherent and was to be strictly enforced through the regular action of ecclesiastical courts, the position would be entirely altered. Power to make such law would then become a far-reaching power of the utmost practical importance.

That the House of Commons would be at once antagonized by the new claim was inevitable. Suspicion of the King's intentions, dislike of all clerical claims, and the influence of its lawyers, were immediately decisive. The resolution of Convocation, obtained by Bancroft, to the effect that Parliament had no right to meddle with matters ecclesiastical, could not, indeed, be held to mean that an Act of Parliament dealing with the Church would be invalid. It merely emphasized the claim of Convocation and acted as an additional irritant. The Apology of the Commons in 1604 was a protest, not against the substance of the new Canons but against the assumption of power to enact them. The House informed James that he was mistaken if he supposed that he could make any law concerning religion 'otherwise than in temporal causes by consent of Parliament'. When in February 1605, the judges were induced to declare that in their opinion the King could 'make orders and constitutions for the government of the clergy,' neither the House nor the common lawyers were impressed. In 1605 a bill to prevent the enforcement of Canons unconfirmed by Parliament was passed by the Commons, only to be rejected by the Lords. To say that Bancroft made a mistake in challenging the opposition of the lawyers and the House of Commons by his claim on behalf of the clergy, has too much of the quality of that shallow wisdom that comes after the event. It would have been impossible to obtain from Parliament enactment of the reforms he desired. He took what seemed at the moment the line of least resistance. But the result of the action taken was that the ecclesiastical policy of the early Stuart Kings,

however rightly it may have been conceived, was made to rest on a theory at best very doubtful in law and one that could not very long be maintained. The claim made was at the root of much, if not most, of the later Parliamentary opposition to that policy. Actually, indeed, the claim was successfully maintained up to the time of the famous resolution of December 1640. The House of Commons then declared that 'the clergy of England', in convocation or otherwise, 'have no power to make any constitution, canons or acts whatsoever, in matter of doctrine, discipline or otherwise, to bind the clergy or the laity of this land without the consent of Parliament.' They had said substantially the same thing in 1604.

Chapter III

THE VIEW OF THE JACOBEAN DIVINES

MAINTENANCE of the theory adopted by James and Bancroft seems quickly to have become a point of orthodoxy with Jacobean divines. It would appear from the wording of the Apology of 1604 that the House of Commons was under the impression that what confronted them was essentially a claim by the King. But the writings of those who, under James I, defended that claim, made it clear that from the clerical point of view that was not the case. Whatever may have been in the mind of James himself, or of Bancroft, it was a claim on behalf of the clergy to make law for the Church that was asserted by the Jacobean divines. In the view, of at least the ablest among them, it was essentially Convocation that made the law: the King could do little more than give it legal sanction. There can be traced in their writings a movement away from Elizabethan Erastianism and towards a new, and an older, conception of the Church. Very distinctly there appears a tendency to conceive of the Church as a society radically distinct from the State, even though included within it; a society standing on its own separate base and properly and rightfully governed by its clergy. The development of that view was part of the general movement of thought among the clergy in the reign of James I.

When Bancroft, then Bishop of London, had in 1588 ventured to suggest that episcopacy was of apostolic institution, protest had at once been made from within the Privy Council. Nevertheless, that way of thinking seems to have gained ground rapidly in the later years of Elizabeth. Hooker himself declared, in 1597, that 'the orders of clergy had their beginning from Christ'.[1] Under James I, and partly owing to his own attitude, it became orthodox to assert a *jus divinum* in the episcopate. In some sense or degree it was asserted by most clerical writers, though they were usually cautious about drawing conclusions. The authority of bishops over their

[1] *Ecclesiastical Polity*, bk. V. *Works* (Clarendon Press) II, p. 482.

clergy, declared William Barlow, Bishop of Rochester, in a sermon at Hampton Court in 1606, is the same now as in the days of Timothy and Titus, 'they receiving' it from the Apostles and we from them'.[1] By that time this seems to have been the orthodox view: it was at least that which was favoured in the highest quarters. George Downame was a convert to orthodoxy from Presbyterianism and his theology remained always Calvinistic. But the greater part of the second of his *Two Sermons* of 1608[2] was devoted to proving that the Apostles had organized a system of dioceses each governed by its own bishop.

It must not, however, be imagined that the assertion of a *jus divinum* in episcopacy necessarily involved a belief that every 'true' Church must needs be episcopalian. It is quite clear that it was in Sanderson's secondary sense that most, if not all, the Jacobean divines maintained that episcopacy existed by divine right. As Sanderson explained later the term could be used of such things as 'have authority and warrant from the institution, example or approbation either of Christ himself or his Apostles and have . . . been held by the consentient judgment of all the Churches of Christ . . . needful to be continued'.[3] Downame explicitly explained that it was in this or some similar sense, that he used the term. 'Although', he wrote, 'I hold the calling of bishops, in respect of their first institution, to be an apostolical and so a divine ordinance, yet I do not maintain it to be *divini juris*, as intending thereby that it is generally, perpetually and immutably necessary.'[4] It was not yet denied that a 'true' Church may exist without bishops. But it seems to have been more and more generally held that ordination otherwise than by a bishop could be valid only in non-episcopalian Churches.

Along with the increasing stress on the apostolical origin and authority of episcopacy went a marked tendency to insist on the dignity and the power attaching to the clergy as such and in general. Every priest, it was said, holds by episcopal

[1] The first of the *Four Sermons*, printed in 1607.

[2] A second edition of the *Two Sermons* appeared in 1609. This publication attracted much attention and led to controversy. Downame became Bishop of Derry in 1616. His Calvinism appears in a treatise on the *Covenant of Grace with the Certainty of Perseverance*, published in 1631, and suppressed.

[3] *Episcopacy not prejudical to Royal Power*, 1661, pp. 13–14.

[4] *A Defense of the Sermon*, 1611, p. 2. This was Downame's reply to an 'Answer' to his second sermon that had appeared in 1608.

ordination powers derived ultimately from the Apostles. Of this tendency Downame supplies an extreme example. The ministers, he declared, in the first of his *Two Sermons*, are 'ambassadors of God' and 'ordained to supply the room of Christ'. They 'have power to bind and loose the souls of men and to deliver the obstinate to Satan and what they do upon earth is ratified in Heaven'.[1] It is every one's duty 'to hear the word preached not as the word of man but, as it is indeed, the word of God and to receive the Minister . . . as the angels of God, yea, as Christ Himself'.[2] 'To speak against them is to speak against God.'[3] As the soul excels the body so ministers of the Gospel excel ordinary magistrates. 'The magistrate is an ordinance human . . . but the ministry is an ordinance divine.'[4] These it must be remembered are the views of a man who carried over Presbyterian ideas into the episcopalian Church. As such they are not surprising. What may seem surprising is the obvious suggestion that increasing insistence on the dignity of the ministers of the Church was in some degree due to the existence within it of Presbyterian or 'Puritan' conceptions.

All this evidently links up with, and indeed leads up to, the assertion that the right of determining doctrine and of regulating ritual and discipline properly belongs to the clergy even in a national Church. The chief champions of this last proposition under James I were Thomas Sparke, Carleton and Field. Downame merely says, as they all say, that the Church cannot make law for itself without the King's concurrence. But he clearly implies that, with the King's concurrence, it can do so.

Like Downame, Thomas Sparke was a prominent Presbyterian who conformed after the Hampton Court Conference. Born as far back as 1548, he had represented the 'Puritan' party in a conference at Lambeth in 1584, along with Walter Travers. He was summoned to the conference at Hampton Court as 'a pillar of Puritanism'; and seems to have been converted on the spot. He proceeded, in 1605, to write a treatise to prove to his old associates that they had no right to refuse obedience to the new Canons.[5] He argued that all things 'neither for

[1] *Two Sermons*, 1608, I, p. 39. [2] Ibid., p. 22. [3] Ibid., p. 68. [4] Ibid., p. 52.
[5] *A Brotherly Persuasion to unitie and uniformitie in judgment and practice, touching the received and present Ecclesiastical Government and the authorized rites and ceremonies of the Church of England.* Published in 1607, but circulated earlier in MS.

their nature nor use commanded nor forbid' in Scripture are for the religious man things indifferent. In this category, he declared, were all matters of Church organization and ritual. He asserted roundly, that 'we may not deny' that the King, acting with the clergy in a national synod, has full authority in respect of all such things. The paramount interest of all is peace and order and it is every man's duty to conform quietly 'to the order of the Church wherein he liveth'. 'The public judgement of the Church in such matters is always to be preferred before the private opinions of this man and that.'[1]

But by far the fullest and most cogent expressions of the view that it was for the clergy to make law for the Church came from George Carleton[2] and Richard Field. Conspicuously lucid and able is Carleton's *Jurisdiction, Regall, Episcopall, Papall*, published in 1610. He pointed out, to begin with, that extravagant claims had been made for the secular sovereign in relation to the Church. Stephen Gardiner, he says, found a massy crown of gold, silver, copper and dross on the Pope's head and transferred it just as it was to the head of the King.[3] Confusion and difficulty has therefrom arisen, but the main principle to bear in mind is simple. Church and State are fundamentally distinct. All 'coactive' or coercive power belongs to the King, but all spiritual jurisdiction belongs to the Church itself. The Church Universal is invisible and unknowable. So far as it is in any sense visible it consists of particular churches. Each of them has its proper spiritual and temporal rulers. The spiritual government of any particular church is vested in its clergy, to whom belong of right all its 'internal jurisdiction' or that which is concerned simply with its character and function as a Church. The civil magistrate has no part in this and no right to interfere with it.[4]

Of what, then, exactly, does this internal jurisdiction consist? The Church, Carleton answered, has authority to determine 'controversies of faith' and consequently to judge what is heresy. It has power to ordain and to excommunicate. To it, also, properly belongs the 'institution and collation of benefices

[1] *A Brotherly Persuasion*, p. 12.

[2] Born in 1559, Carleton became Bishop of Llandaff in 1618 and of Chichester in 1619. By order of the King he attended the Synod of Dort in 1618. He died in 1625.

[3] *Jurisdiction*, Epistle Dedicatory.

[4] Ibid., ch. I.

and spiritual cures'. All these are powers which Princes neither give nor can take away.[1]

The authority of the Church, vested in the clergy, is to be exercised by its bishops acting alone or by synods summoned by them. Carleton asserted emphatically that episcopal government was established by the Apostles, 'to stand and continue to the end of the world'.[2]

What, then, does royal supremacy in matters ecclesiastical amount to? Since all coactive power is vested in the Prince, the Church cannot without his concurrence, make positive law, since there is, strictly speaking, no such thing as law without sanction.[3] Furthermore it is the duty of the Prince to maintain true religion. He has, therefore, a right to see to it that the bishops, and clergy generally, do their duty. He has a right to give effect to the determinations of the Church as to doctrine and ritual through courts of his own. He may, that is, establish what are known as ecclesiastical courts endowed with coercive jurisdiction. But it must be carefully borne in mind that such courts are royal courts merely; they are not courts of the Church. Their judgements are the King's judgements; they are human and fallible. If the King choose to appoint clergy to act as judges in these courts, he may do so, but he is under no obligation to do so. Any coercive power that is exercised by bishops is, as Sanderson declared in 1648, 'wholly and entirely derived from the King'. On the other hand, if the Prince command anything unlawful to the Church, its guardian bishops must resist him. 'For the preservation of true doctrine in the Church, the Bishops are the great watchmen. Herein they are authorized by God. If Princes withstand them in these things, they have warrant not to obey Princes.'[4]

It would seem, that, according to Carleton, the determinations of Convocation or of the bishops collectively, concerning doctrine and ritual, ought to be accepted by the King without question. He may, however, refuse to give practical effect to them: and in that case they would be binding in the court of conscience only and not in the royal ecclesiastical courts. Carleton was like Downame, a Calvinist in theology, as is apparent in his later criticism of Montague's books. It is

[1] *Jurisdiction*, p. 9.
[2] Ibid., ch. IV, p. 41.
[3] Ibid., I, p. 19.
[4] Ibid., p. 44.

curious to note how close is his definition of the powers inherent in the Church to that of the Catholic Becanus[1]. These, says the Jesuit writer, consist in authority '*controversias fidei decidere, leges et constitutiones condere, contumaces excommunicare aut alio modo punire delinquentes, ministros ecclesiae constituere et deponere*'.[2] Carleton differs only in giving no coercive power to the Church itself.

In his book *Of the Church* Richard Field went even a little further than Carleton. Like Carleton he conceived of the visible Church as consisting of a group of self-governing churches. He particularized Rome as being one, though its claim to be the only one he pronounced absurd. He was quite clearly of opinion that the determination of right doctrine and right forms of worship properly belonged to the clergy in each particular church. All disputed questions on these matters should be decided by the clergy in synod or convocation.[3] The civil sovereign had, in his view, no spiritual jurisdiction and was, consequently, bound to act in such matters only under direction by the clergy. Normally he could do no more than give sanction by legal penalties to clerical decisions. Only in certain extreme cases was he empowered to go further. If the clergy fail in their admitted duty, the Prince may take action to secure right faith and right worship. But he may not, in any case, himself decide what is right faith and what right worship. He can only do what, according to the clergy themselves, they ought to have done. He may suppress 'gross error contrary to the common sense of Christians', and he may suppress 'heresies formerly condemned'.[4] But in no case may he take upon himself to decide what is heresy. He has power 'only to judge in those matters of faith that are resolved on according to former resolutions'.[5]

Bancroft, it may be said, succeeded in giving a law to the Church, and in making its enforcement easier than it had ever before been. There seems, under James I, to have been a gradual improvement in the quality of the clergy and an

[1] Martin Becan or Becanus was professor of theology at Mainz, Wurzburg and Vienna in turn, and was the author of various controversial writings especially directed against the royal supremacy in England.

[2] This passage occurs in a treatise entitled, *Serenissimi Jacobi Angliae regis Apologiae . . . Refutatio*, 1610.

[3] *Of the Church*, bk. V, ch. LIII, p. 426.

[4] Ibid., V, p. 427.

[5] Ibid., p. 428.

increase among them of loyalty to and pride in the Church. But by far the most important change that was going on was the steady development of what may, for want of another term, be called a High Church point of view. The free development of that point of view was assisted by the fact that a belief in the *jus divinum* of episcopacy was favoured by the higher powers. The movement is, perhaps, especially well seen in the high episcopalianism of men like Downame and Carleton. But it was the increasingly positive assertion that the regulation of the Church in all the essentials of religion belongs of right to the clergy, that was likely, above all else, to arouse the antagonism of a thoroughly Erastian and anti-clerical House of Commons. The writings of Carleton and Field did actually supply some ground for the later charge that the High Church clergy were bent on usurping the power of the Crown and nullifying the royal supremacy.

From the Calvinistic or the merely conservative point of view, worse remained to come. But the further development of High Church views that was proceeding in the later years of James I, after Bancroft's death, will be best dealt with in closer connexion with the developments under Charles I, to which it formed a transition. Singularly little sign of it appears in Jacobean writings till the publication of Montague's *New Gagg* in 1624. Then only, it seems, did the House of Commons begin to realize what was going on.

Chapter IV

THE OPPOSITION UNDER JAMES I

§ 1. THE HOUSE OF COMMONS

The House of Commons and the Lawyers

THAT the House of Commons should refuse to admit that the King, acting with Convocation, could regulate doctrine and worship as he pleased, was matter of course. Had it been made clear to the House that the claim was a claim of the clergy rather than of the King, its antagonism would assuredly not have been mitigated. It must be admitted that it was really absurd to maintain that the religion of the whole population should be settled for it by a clerical assembly. The absurdity was even greater than when the same claim was made for Parliament.

The measures proposed by Bancroft to remedy the poverty of the clergy and so get rid of the need of pluralities, irritated the House perhaps even more seriously. His proposals included an increase of tithe and its extension to house rent in towns, and the levy of contributions on tithe impropriators. There was even a suggestion of buying out lay impropriations from taxation. It was certain that such proposals would be met with determined and angry resistance by a House representing landlords and municipal corporations. Its opposition, in fact, rendered the whole scheme abortive.

The House of Commons under James I was suspicious of the King's intentions; it was hostile to all clerical claims to authority; it saw approach to Rome in any insistence on ceremonial; it was profoundly disturbed by the proposal to increase tithe and lay hands on impropriations. All this seems to account sufficiently for the fact that, down to 1610, the House allowed itself to be guided in certain respects by its 'Puritan' members, though but a small minority. In 1604, the House proposed that only men with University degrees or men certified as sufficient by six preaching ministers of the diocese, should be admitted to benefice. It proposed also that no more pluralities

should be created. The adoption of these proposals would probably, within no long time, have made the parochial system unworkable. In June 1610, the House asked that 'painful and learned', but deprived, ministers should still be allowed to preach and, again, that no more pluralities should be licensed; absurdly adding that pluralities 'keep divers learned men from maintenance'.

Though, in those years, the House of Commons appears to have accepted Puritan statements on matters of which it plainly knew very little, it was certainly not a 'Puritan' body in the sense in which I have so far used that term. Its members were neither Presbyterians nor Congregationalists. Nor was it, I think, 'Puritan' in any sense that can, rationally or conveniently, be given to the word. If, indeed, dislike of clerical claims and hatred and fear of Romanism, be taken as sufficient to constitute a Puritan, then, without doubt, the great majority of the House was Puritan. But in that case it was the Presbyterian or the Disciplinarian party that was not Puritan. Such a use of the term can only land us in a maze of inconsistencies.

The opposition of the House of Commons to the policy of James and Bancroft cannot be regarded as having been very serious, except on the one fundamental question of the right to give law to the Church. There is actually little sign that it had any strong objection to the substance of the Canons of 1604 or that it knew much about them. It is true, however, that its opposition to their enforcement might have become more serious had it not been for the appointment of Abbot as successor to Bancroft in 1610. That appointment led, practically, to a relaxation of the pressure on non-conforming clergy. The fact remains that, after 1610, no strong feeling on any sort of religious question was manifested in the House, till the affair of Montague, except against Romanism.

But fear of Roman Catholicism was already an obsession with the House of Commons. Even in 1610, the anti-Catholic feeling displayed was far stronger than any other. In 1621, members indulged in violent diatribes against Catholicism and Spain. Pym justified his attitude by reference to the old fiction that all Catholics were bound to be disloyal. The petition of December in that year not only prayed the King to enforce

strictly the laws relating to Catholics, but urged him to give military aid 'to those of our religion in foreign parts'. The House did not in the least realize what it was asking for. It was obsessed with a quite erroneous idea of the power of Spain; and on all questions concerning religion its views were distorted by fear of Romanism. Its obsessions and misconceptions were to become, practically, more and more important.

§ 2. THE LAW COURTS

The most serious opposition to Bancroft's scheme of reform came neither from the House of Commons nor from the Puritans, but from the common law courts. For the lawyers it was not a question of religion or of order in the Church. Their obstructive action was an effort to maintain the supremacy of the common law. Bancroft's reforms led necessarily and immediately to an increase of the intensity of the ancient conflict between common law and the ecclesiastical courts. Throughout at least the first half of the reign of James, the attempt to establish order and uniformity in the Church was hindered, and to a considerable extent frustrated, by the action of the common law judges.

The claim of the common law courts to define the limits of ecclesiastical jurisdiction, by deciding every case in which that jurisdiction was challenged, was of the utmost importance, practically and constitutionally. The whole question of the nature and extent of the royal supremacy was involved in it. But for the claim of the King to make law for the Church with the assent of Convocation, the conflict could hardly have taken the form it did take. Under the new conditions, the claim of the judges became a claim to define and limit the King's rights as Supreme Governor of the Church. The anti-clericalism of the House of Commons found by far its most effective ally in the common lawyers.

That some authority capable of deciding the limits of ecclesiastical jurisdiction was very sorely needed is quite evident. The line dividing civil from ecclesiastical jurisdiction, very hard if not impossible to draw logically, had never been practically definite. What the common law courts claimed was that it was for them to draw that line and decide

those limits. It was a very ancient claim. Writs of prohibition addressed to ecclesiastical courts and involving the same claim, occur as far back as the reign of Henry III.

Increased intensity of the ancient conflict did not, however, begin under James I. It began as soon as the High Commission had assumed the character and functions of a court. After 1590 there took place a very marked increase in the number of writs of prohibition. Literary attacks, too, on the powers assumed by the High Commission were published before Elizabeth's death. Much the same view was taken in *The Treatisour*, of 1598, as was afterwards taken by Coke.

Whitgift, in 1598, had suggested to the Privy Council that, since ecclesiastical courts had now become royal courts, there remained nothing to justify the issue of writs of prohibition. Ecclesiastical courts, he suggested, might equally well claim to issue such writs to the civil courts. The same view had been expressed in Richard Cosin's *Apologie*,[1] of 1593. Cosin had argued that, since all ecclesiastical jurisdiction is royal, and since it is wholly distinct from that of civil courts, any question concerning its extent is for the sovereign alone to decide. It is for ecclesiastical courts to interpret ecclesiastical statutes and for the Crown to decide the limits of their jurisdiction.

Exactly the same was the opinion of Bancroft. He suggested, in 1605, that any case of dispute about jurisdiction between civil and ecclesiastical courts should be referred to the King personally for decision. He pointed out that the ancient form of the writ of prohibition assumed that an ecclesiastical court was not the King's, and that its law was not the law of the land. His view of the question was supported, a little later, by Cowell in *The Interpreter*, and by Sparke and Downame and Sir Thomas Ridley. Ridley used strong and offensive language. He charged the common law judges with issuing prohibitions grounded on mere technicalities and declared that they were moved by desire of personal gain through increase of business.[2]

The argument of Cosin and Bancroft may be said to have been logically valid; but it made no appeal to the common

[1] *An Apologie for Sundrie Proceedings by Jurisdiction Ecclesiasticall*, 1593. Cosin was one of the Commissioners.

[2] *A View of the Civile and Ecclesiastical Law*, 1607. Ridley had been Provost of Eton and was Bancroft's Chancellor. He was one of the drafters of the Canons of 1604.

lawyers. They held that if law were to be made for the Church simply by King and Convocation, it was all the more necessary that the civil courts should have power to limit ecclesiastical jurisdiction. If, in cases of dispute, the King was the sole judge, it followed that he would be able to extend indefinitely the jurisdiction of ecclesiastical courts. If that jurisdiction were limited only by the King's judgements, what limit would in the long run remain? What sort of cause is it that has no 'spiritual' aspect? It is clear that a constitutional question of the gravest importance had arisen.

In replying to the arguments of Bancroft, the lawyers seem to have almost entirely ignored the contentions of their opponents. Their answer was excessively simple. Law, they said, is law, and what it ought to be is irrelevant. Where there is doubt what the law is, it is for the common law judges to decide the question.

But actually the judges, led by Coke, went very much farther. In the years 1607–8, there was a very great increase in the number of prohibitions, and their character became such as threatened to destroy to a great extent the effectiveness of all ecclesiastical jurisdiction. The judges now maintained that the High Commission had no right to fine or to imprison or to use the oath *ex officio* or to enforce appearance before it by arrest. They were disposed even to refuse to allow of excommunication except in cases they considered as sufficiently ecclesiastical and sufficiently serious. It has been pointed out that, had their view finally prevailed, the ecclesiastical courts would have been unable to deal with the offences of lay persons except by admonition. That consummation is probably just what the judges desired. But there seems to be no ground for saying that a wish to restrict the coercive power of ecclesiastical courts to the clergy was in any way unreasonable. Such restriction would have disabled them from taking effective action against lay sectaries or heretics. That, in itself, it may fairly be held, was highly desirable.

In 1607, a lawyer named Nicholas Fuller, arguing before the King's Bench on a *habeas corpus*, denied absolutely that the High Commission had a right in any case to imprison or to fine, and went out of his way to denounce it as popish and anti-christian. He was promptly imprisoned and fined by the

Commissioners; but what purported to be his speech was published as a pamphlet.[1] It does not matter, he had argued, what powers the Commissioners have under their letters patent, if those powers were illegally conferred. 'The law admeasureth the King's prerogative.' The law is the meteyard and the judges the measurers.

The position rapidly became so serious that the King was forced to intervene. In November 1608, judges and bishops were summoned to argue the question before him. James now declared that in case of any dispute about jurisdiction, decision lay with him; and added, feebly, that he would protect the common law. Coke's reply, 'The common law protecteth the King', he declared to be a 'traitorous speech'. Legal discussion continued throughout 1609 with no positive result. At the end of that year Coke presented an elaborate written argument which concluded the actual discussion.

The technical details of Coke's argument do not concern us here. According to him the main question was as to where lay the right of interpreting ecclesiastical statutes. He argued at great length that no ecclesiastical court was competent to interpret Acts of Parliament. He did not deny the fact that, from 1579 onwards, authority to fine and imprison had regularly been conferred on the Commissioners for ecclesiastical causes under letters patent. But he declared that no letters patent could give powers that had not been vested in the Crown under Elizabeth's Act of Supremacy. That Act had recognized no ecclesiastical power but such as 'hath heretofore been or may lawfully be' exercised by ecclesiastical authority. He argued that since before that Act, no one could be fined or imprisoned by ecclesiastical courts, therefore no power to fine or imprison could be derived under that Act.[2]

Evidently the argument had reached a deadlock. One side maintained that all the questions at issue were governed absolutely by common or statute law and that the interpretation of statutes lay solely with the common law judges. The other side held that the King, by virtue of his prerogative as Supreme Governor of the Church, was empowered not only to create ecclesiastical courts, but to endow them with such

[1] *The Argument of Nicholas Fuller in the case of F. Lad*, December 1607. The pamphlet seems to have been republished in 1641.

[2] And see Coke's *Institutes*, pt. IV, ch. LXXIV.

powers as he judged necessary for the correction, in the words of the Act of Supremacy, 'of all manner of heresies, schisms, abuses, offences, contempts and enormities.' There was no possibility of reconciling the two views.

What was actually reached, about the end of 1609, was not a reconciliation, but a practical compromise. Neither side gave up any of its claims or withdrew any of its contentions. The judges continued to issue prohibitions, but they did so with more caution and moderation than before. The High Commission continued to fine and to imprison. James, for his part, practically dropped his claim to decide disputes. In 1610, the House of Commons intervened with a declaration that, 'under colour of certain words' in the statute of Elizabeth, the Commissioners 'do fine and imprison and exercise other authority not belonging to the ecclesiastical jurisdiction restored by that statute'.[1] That declaration availed not at all: the drift of things was for the time in the opposite direction. The judges could not for long maintain the position they had taken up. In any conflict with the Crown they were hopelessly at disadvantage. After Coke's dismissal serious interference with the action of the Ecclesiastical Commissioners gradually ceased. With the change in the attitude of the judges that was brought about by new appointments, it practically ceased altogether. After 1630, prohibitions were rare and exceptional. The London Petition of 1640 complained that 'of later times the judges of the land are so awed with the power and greatness of the prelates . . . that neither prohibition, Habeas Corpus nor any other lawful remedy can be had'.[2] Even though the claims of the common law courts were never renounced, victory practically, for the time, was with the Crown.

[1] Petition of July 7th 1610.

[2] 'Root and Branch' Petition, art. 28.

Chapter V

'PURITAN' PROTEST AND WRITINGS

§ 1. SOME GENERALITIES

In this chapter, as heretofore, I use the word Puritan to signify simply either Presbyterian Disciplinarians of the school of Cartwright and Travers or Congregationalists of one type or another. In relation to the time of James I, that, I think, is still the most conventient use of the term. Such use of it is of course quite superficial and in fact makes of it a mere convenient label. It is obviously true that Puritanism itself cannot be identified with any particular religious creed; and, at least after 1640, it becomes practically impossible to identify it even with any group of sects. If we are finally to give any deeper and really inclusive meaning to the word Puritanism, that meaning must needs be psychological. But Jacobean Puritanism was, it seems to me, still somewhat immature. An attempt must be made later to give a meaning to the term; but this is not the place for it.

Of the various writings that appeared under James I, perhaps the most interesting are certain Baptist pleas for toleration. These, however, it will be most convenient to deal with later. Putting them aside, I can find no Puritan writings of this period of any sort of distinction or originality except those of Stoughton and John Robinson. Something, however, must be said of the character of the Puritan writings in general.

Presbyterians and Congregationalists alike, under James I, were for the most part simply repeating what they had said, over and over again, under Elizabeth. The arguments, assumptions and assertions of Elizabethan Puritans were all reproduced. It was asserted that it is absolutely unrighteous to impose as part of public worship any ceremonial not directly warranted by Holy Scripture. Especially was it abominable to insist on the performance of ceremonies that had been 'abused to idolatry'. Episcopacy, it was dogmatically declared,

was not of Apostolic institution. No minister of the Gospel should be allowed to exercise civil jurisdiction.[1] Henry Jacob declared that, 'neither for the nature of their offices or for the quality of their proceedings' had the bishops 'any warrant from the word of the Lord or the law of this kingdom'.[2] Serious exception was taken not only to the use of the sign of the cross and to kneeling at communion, but to the reading in Church of parts of the Apocrypha and the omission of certain portions of the canonical Scriptures.[3]

To some extent new was the earnest endeavour of nearly all the writers to persuade the King that he would be at least as comfortable with Presbyterian consistories as with bishops, or that he would find Congregational churches more amenable than either. Stoughton argued lengthily to show that it was a delusion to suppose that a Presbyterian form of church government was incompatible with monarchy. Henry Jacob, on the other hand, was very anxious to prove that, while Presbyterian synods were, from the King's point of view, almost as bad as bishops, it was the Congregationalists who were the true friends of royal supremacy. Both groups were equally desirous of persuading the King that they fully accepted his supremacy in causes ecclesiastical. Like the Elizabethan Puritans they, at the same time, made it clear either that they did not accept it in the sense of the law or, simply, that they did not understand it at all. The protestation on behalf of the 'afflicted ministers' was as emphatic on the point as Jacob. But all through the tract it was assumed that every congregation was a complete church, and the King the head, not of the Church, but of the churches of England. The author seems quite unaware that that was not the theory of English law.

The attitude of the Jacobean Puritans towards the Roman Church was, at best, as prejudiced as that of Travers. It was to them all but Popery to say that the Pope was not the anti-Christ or that the Church of Rome was a true Church or even that salvation is possible within it. The ignorance displayed by some of these writers is rather astonishing. Leonard Busher

[1] See for instance, *A Protestation of the King's Supremacy, made in the name of the afflicted Ministers*, 1605.

[2] *An humble Supplication for Toleration*, 1609, p. 7.

[3] See for instance, *Reasons for a Refusall of Subscription to the booke of Common Prayer*, 1605.

actually asserts that the Roman Church persecutes as heretical the doctrine that Christ was the Lord from heaven.[1] But even those not so ignorant exhibit an unreasoning animosity that leads them into obvious fallacies. The author of the *Answer* to Downame's second Sermon argued that there must be something wrong with evidence that seemed to show the apostolic institution of episcopacy, because otherwise the bishops of the Church of Rome would, on the same grounds, be able to claim a *jus divinum.*[2]

One of the most striking characteristics of Puritan writings and petitions, from about 1580 onwards, is the readiness of the authors or promoters to attribute dishonesty to their opponents. This appears to result mainly from a real difficulty in understanding how any one can honestly disagree with them. They will not admit that there is anything to be said on the other side. They are thus led to make quite grotesquely absurd assumptions. We find it constantly assumed that pluralities serve only corrupt greed, and that no one but themselves really desires to get rid of this universally admitted evil. Even more absurd is the assumption, frequently made, that the bishops not only consciously connive at abuses, but that they know perfectly well that episcopacy is contrary to the law laid down in the New Testament. From the time of Martin Marprelate onwards to 1641, Puritan writers obstinately continue to make or to imply this stupid assertion. In spite of all that was written by Whitgift and Hooker, Carleton and Field, they found it difficult, if not impossible, to believe that any man can really think either that no prescript form of church government can be found in Scripture, or that the form indicated is neither Presbyterian nor Congregational.

This extreme dogmatism in Puritan writers seems to be closely connected with their strange assurance of a superiority in themselves denominated 'Godliness'. 'By the reproachful name of Puritans', says Josias Nichols, 'all Godly Protestants are most cunningly depraved.'[3] Those not so depraved, it followed, are all ungodly. 'They have impropriated unto themselves', Bacon had written in 1588, 'the names of zealous, sincere, reformed, as if all others were cold minglers of holy

[1] *Religious Peace*, 1614.
[2] *Mr. Downame's Sermon . . . answered and refuted*, 1608. Preface.
[3] *A Plea of the Innocent*, 1602.

things and profane and friends of abuses. Yea, be a man endued with great virtues and fruitful in good works; yet, if he concur not with them, they term him, in derogation, a civil and moral man . . . whereas the wisdom of the Scriptures teacheth us otherwise. . . . St. James saith: This is true religion, to visit the fatherless and the widow. So as that which is with them but philosophical and moral, is, in the apostle's phrase, true religion and Christianity.'[1]

People who arrogate to themselves a monopoly of sincerity fall justly under suspicion of its contrary. It is sometimes, and more especially during the period of exasperation under Laud, very difficult to suppose that the Puritan writers or petitioners believed all they said. That under James, some Puritans were at times guilty of very dishonest jugglery with petitions seems certain; while later it is hard to believe that their persistent use of slander as a weapon was anything but consciously dishonest. 'The Church of England', Cartwright had written, 'is fraught with popish ceremonies: they that favour the cause of reformation maintain nothing but the sincerity of the Gospel of Jesus Christ: all such as withstand them fight for the laws of his sworn enemy, uphold the filthy relics of Antichrist and are defenders of that which is popish.' Men who thought like that were not likely to be very scrupulous in fighting against Christ's sworn enemies. It seems almost impossible that fanaticism should be really honest. Yet it would be merely absurd to suppose that any but a small proportion of Puritans were conscious of dishonesty. Even where a single individual only is concerned, self-deception is always more probable than conscious hypocrisy. Where many are concerned the hypothesis of conscious dishonesty becomes altogether inadmissible.

Many Puritan writers were, like Leonard Busher, very ignorant and very simple men. But it was far from being only the ignorant and simple who suffered from the twin delusions of superiority in themselves and wickedness in their adversaries. In their belief in their own virtue I am sure there was no dishonesty. For men to whom godliness consisted, at least partly, in acceptance of Calvinistic dogma and a particular conception

[1] *An Advertisement touching the Controversies of the Church of England*, ed. Montagu, p. 54. This was written in 1588 but not published till 1641. In it Bacon criticized the bishops as needlessly strict and fussy about trifles while ignoring real abuses. But he was harder still on the Puritans.

of the Church, such belief was natural and even logical. The ready attribution of dishonesty to opponents was to a large extent due to the fact that they rarely seemed to have any understanding of opposing positions. The theory of an episcopate possessing powers derived from the Apostles, yet subordinated to the civil magistrate, had certainly weak points. It is remarkable that Puritan controversialists hardly apprehended them. Their criticism is often inept because they did not understand what they were criticizing.

But it is true, also, that as a rule they seem to have made no effort to understand. 'Let any man of contrary opinion', Hooker had written, 'open his mouth to persuade them, they close up their ears, his reasons they weigh not, all is answered with rehearsal of the words of John: We are of God; he that knoweth God heareth us; as for the rest ye are of the world.'[1] So to a great extent it was still. Assurance so absolute that they felt no need to look close at what their adversaries said, is but a poor excuse.

§ 2. WILLIAM STOUGHTON

Stoughton's *Assertion for True and Christian Church Policy* was published anonymously in 1604.[2] It contains a frank statement of what was not said at the Hampton Court Conference. The author set forth, with notable ability, a scheme for the establishment of what he calls 'the Apostolical and primitive Church government'. The form of the Church he desired to see established was that contemplated by Cartwright and Travers, and proposed to Parliament in 1584. The main object of the treatise was to show that the transformation could be effected without 'any greater alteration of the laudable laws, statutes and customs of the realm, than may well be made without damage to the people'.[3] Stoughton dedicated his treatise 'to the most worthy and Christian gentlemen: the apprentices and students of the Inns of Court'. That dedication is perhaps the cleverest thing in the book.

[1] *Ecclesiastical Polity*, Preface, Clarendon Press ed., p. 153. The words quoted are 1 John iv, 6.

[2] The author states that the book was 'for the most part written certain years before the Queen's death'.

[3] Title-page.

Able as the treatise undoubtedly is, it affords, at the outset, an example of the almost inexplicable assumptions that we so often find in Puritan writings. The assumption that 'the apostolical and primitive form of Church government' was presbyterial, may indeed be held to be justified by the subject and intention of the treatise. But the author proceeded, at once, in his 'dedicatory epistle', to suggest that the bishops themselves knew that it was so and that their actual attitude was due not to conviction, but to 'policy'. A little later on he went farther still, asserting that 'they cannot deny but must confess' that the Presbyterian system is primitive and apostolic and according to the will of God.[1] This might only signify that Stoughton was totally ignorant of the mass of controversial literature already existing on the subject. But he was not, to all appearances, an ignorant man. Can he really have believed that all those who, from Whitgift to Hooker, had denied that any form of Church government could be found in Scripture or had maintained that episcopacy was of apostolic institution, had deliberately pretended to believe what they knew to be false?

It would, Stoughton argued, be quite easy to alter the form of Church government without making any other change. It is for Parliament to transform the episcopal into a Presbyterian church: all that is required is special legislation. 'It belongeth only, wholly, and altogether to the three Estates, as well to root out and pull up whatsoever government is not justifiable by the Holy law of God, as also to plant and settle whatsoever discipline is warrantable by the same law.'[2] It is merely absurd to say that Parliament, as a lay body, has no right to alter the form of Church government. If that were so, the repudiation of Papal claims would have been invalid.

Three things, in Stoughton's view, were essential if the Church were to assume its proper form. In the first place, episcopacy must be altogether abolished. The abolition of episcopacy was, he declared, involved, legally and logically, in the legislation of Henry VIII.[3] The Elizabethan bishop was not really a bishop; he was a royal commissioner deriving all his powers from the Crown. But the bishops had persistently acted as though they were more than this; they had assumed to themselves powers that belonged to the Crown only. The King is

[1] *An Assertion*, p. 22. [2] Ibid., p. 166. [3] Ibid., p. 48.

bound utterly to abolish episcopacy, unless the bishops can show warrant from the Scripture for the authority they claim over their fellow pastors.[1] This it is, of course, assumed that they cannot do.

It is necessary, in the second place, that all technical distinction between ecclesiastical and other royal courts should be done away with. So-called ecclesiastical courts should be definitely recognized as 'merely civil, secular and temporal'. The judges in them should all be lay lawyers and appeals should go from them to 'higher royal courts'.[2] Every offence, it is declared, conceived as punishable by 'spiritual' authority, is equally punishable by temporal power.[3] Heresy should be dealt with under law made in Parliament and should be treated as a felony. 'The King and his Parliament, with consent of the clergy in their Convocation hath power to determine what is heresy and what is not heresy.'[4]

Thirdly, Stoughton asserted, every one having as much interest in the Church as have the clergy,[5] the people of each parish should be recognized as having a right to elect their pastor. This right is grounded, he says, on nature and reason, and the practice of the primitive Church and cannot be abrogated.[6]

Nevertheless, he proceeded to abrogate it, at least partially. Obviously a really free election of the pastor in every parish would not have worked at all as he wished. Not only was that the case, but to attempt to abolish the rights of lay patrons might well have been fatal to the prospects of his party. Every minister of a parish, therefore, is to be presented by the patron, ordained by the bishop and other ministers and then 'elected' by the people.[7] Presumably this means that the people of the parish will have a veto: if not they will have no power at all. How a bishop comes to be in this galley is not clear; but the author remarks elsewhere that the King, can, if he pleases, appoint overseers and call them bishops.[8]

What is needed, Stoughton goes on to explain, is the transformation of 'Papal Prelacy' into a 'Christian aristocracy.'[9] He had already attritubted to Parliament power to alter the form of Church government and, with the assent of Convocation, to determine what is heresy. But it appears now, finally, that all

[1] *An Assertion*, p. 68. [2] Ibid., p. 87. [3] Ibid., p. 116.
[4] Ibid., p. 121. [5] Ibid., p. 15. [6] Ibid., pp. 211–2.
[7] Ibid., p. 273. [8] Ibid. p., 218. [9] Ibid., p. 351.

Parliament can rightfully do, is to establish a 'Christian aristocracy' which, once established, becomes independent of Parliament in relation to the Church it governs. Power to depose ministers, he declares, and to excommunicate, 'to devise and establish rites and ceremonies in the Church, to define what is truth, to pronounce what is falsehood, to determine what is schism and to condemn what is heresy', belongs by the Scriptures, 'to the true bishops and pastors of the Church', who form the Christian aristocracy.[1] What, under these circumstances, becomes of the power of Parliament to determine what is heresy is not stated. But near the very end of the book occurs the following emphatic declaration: 'The officers appointed by our Saviour Christ to be over the churches in every country . . . have liberty, with the consent of their Christian King . . . to choose what rites and ceremonies they in wisdom and Godliness shall think most convenient.'[2] That is the conclusion of the whole matter; and it is curious to notice to what an extent Stoughton agreed with Bancroft or with Carleton. Presbyterian and Episcopalian alike placed power to define doctrine and determine forms of worship in the clergy, Stoughton's 'true bishops' being only pastors under another name.

One highly characteristic assertion remains. To all these changes, Stoughton declared, no serious opposition is to be expected. A large majority of the population consists of people who are ready to adopt any form of religion officially professed and established. Such people he describes as godless time-servers and, in fact, atheists, 'neither hot nor cold, neither fish nor flesh nor good red herring'.[3] No opposition is to be feared from them; and that being so there will be practically none. These profane and godless people form, he declares, three-fifths of the entire population; and the Papists, who form another fifth, will be quite powerless. On the other hand, all 'Puritan Protestants' will support the change.[4] One can but wonder whether this division of the population into profane persons, Papists and Puritans, is intended to be exhaustive or whether the Puritans number even fewer than a fifth. But probably, to Stoughton, the supporters of episcopacy were all either Papists or profane.

[1] *An Assertion*, p. 358. [2] Ibid., p. 435. [3] Ibid., p. 27. [4] Ibid., pp. 30–31.

§3. JOHN ROBINSON

Pleas for toleration apart, the writings of John Robinson appear to be the only Congregationalist books of James I's time that need any particular attention. Robinson was an Oxford graduate who had taken orders in the Church of England, but seceded early in the reign and went to Amsterdam. In 1610, he was pastor of a congregation at Leyden, where he remained till his death in 1625. He was, evidently, a man of great force of character and of high integrity and some breadth of view. His broad-mindedness has, however, perhaps been exaggerated owing to the publication as his, in 1646, of a famous speech to the *Mayflower* 'pilgrims' which may be at least partially spurious.

Robinson's *Justification of Separation*, a lengthy and argumentative account of the grounds and nature of Congregationalism, was published in 1610. In this, as in his later writings, there is little sign of any originality, save that which comes of an honest endeavour to reach truth and from deep religious feeling. Here certainly was a man who believed every word he wrote. Perhaps the most original thing in the book is the way he sweeps aside all the current argumentation about things indifferent. Orthodox writers generally defined 'things indifferent' as things neither explicitly ordered nor forbidden in Scripture. They argued that it was a duty to conform to the determinations of authority in respect of all such things. To a religious man, Robinson objected, it is mere nonsense to talk about things indifferent, for, in religion, there can be no such things. To say, he declared, that any ceremonies are things indifferent and yet to say that they serve for decency and edification, includes a contradiction. It is not an indifferent thing to minister sacred ordinances decently and to edification, but a thing simply necessary.[1] A ceremony is 'either good or evil according to the furtherance or hindrance it affordeth to the imagination'.[2] If it be simply futile and superfluous it is a mere vanity, an affectation; such things introduced into worship are a taking the Name in vain.

[1] *A Justification of Separation from the Church of England*, 1610, p. 27.
[2] Ibid., p. 28.

Robinson stated clearly that conception of a 'Church' which was the foundation of Congregationalism. 'A company, consisting though but of two or three, separated from the world, whether unchristian or anti-christian, and gathered into the name of Christ by a covenant made, to walk in all the ways of God known unto them, is a Church and so has the full power of Christ.'[1] A true Church consists of people 'joined together by voluntary profession without compulsion'.[2] Plainly it follows that the so-called Church of England is not a Church. It consists of people 'forced together violently by the laws of men'.[3] It is, therefore, a 'false church'; a makeshift, a mere pretence of a church. It is a 'popish device', as are all national churches. 'We do not doubt', he added, 'but there are hundreds and thousands amongst you', who are, 'partakers of the life of God'. With them we may rightfully pray, but with their 'Church' we can have no communion.

It was something, though not very much, to admit that in the Church of England, there were thousands of godly people. Later, Robinson went perhaps even a little farther. In a book written in the last year of his life[4] he declared that, in the English Church were 'many thousands' who were members of the Church Catholic invisible, 'scattered far and wide throughout the world'. The phrase faintly suggests that even Papists may be among the elect. He certainly admitted, in this last book, that a covenanted Christian might lawfully join in the public worship of the Church of England.

The writings of John Robinson express the views of one of the most instructed, influential and broad-minded of the Congregationalists. They may, also, be taken as fairly representative of the ideas of Congregationalists in general. Robinson's views, or his sympathies may have broadened with the years. But there is nothing in his works to suggest that it is likely that he ever made such a speech as was attributed to him in 1646. Even if we take it to be substantially his own, it does not appear to advocate any but a very partial toleration. In any case, whether of 1620 or of 1646, that speech will best be dealt with in connexion with pleas for toleration advanced by Congregationalists.

[1] *A Justification*, p. 125. [2] Ibid., p. 52. [3] Ibid., p. 52

[4] *A Treatise of the Lawfulness of Hearing of the Ministers in the Church of England.* This was not published till 1634.

Chapter VI

THE CATHOLICS

UNDER James I the Catholics, like the Puritans, were doing little more than to repeat what they had many times said already. The fact that the views expressed in their attacks on the ecclesiastical system in England were the views of a considerable body of English people gives them a certain importance. But on the development of thought in England their protest against dominant tendencies is all but negligible. With the main streams of thought and controversy it hardly at all connects. Apart from those who professionally argued against the claims of Rome, very few, if any, paid the least attention to it.

The historical argument of Robert Parsons in his *Answer* to a portion of Coke's Reports[1] was new only in containing more detailed criticism of orthodox legal views, than had appeared in earlier Catholic writings. Coke, of course, maintained that the Act of 1559 merely restored to the Crown rights that had always belonged to it. All through English history, Canon law had derived all its force from the King's sanction, and ecclesiastical courts had always been royal courts while claiming to be something else. It was with these contentions that Parsons chiefly dealt, and he dealt with them effectively enough, even though his history was not much better than Coke's.

For the rest, Parsons forcibly reproduced the old arguments. All admit, he declared, that in every Church there must exist an authority that can 'determine what is to be believed . . . and what is to be done and practised'.[2] But if the determinations of the ecclesiastical sovereign are really authoritative, it follows that there can be but one sovereign and one true Church. It is merely absurd to conceive of religious truth as determined for one nation by one authority and for another by some one else.

To Coke's declaration that the laws of England are the best

[1] *An Answer to the Fifth Part of Reports lately set forth by Sir Ed. Coke*, 1606.
[2] Ibid., Preface, sec. 5.

inheritance of an Englishman, for that by reason of them he enjoys his property in safety, Parsons neatly answered that everywhere alike men enjoy what property they have under the protection of law; and that, in England, a good many have none to speak of. 'The true ancient birthright and best inheritance' of English people is, he declared, 'their right to Catholic religion'.[1]

If Parsons had little to say that was at all new, the Jesuit Becanus had nothing. He faithfully reiterated the great medieval conceptions. Man must needs in this life seek peace and security, and in the life to come eternal beatitude. Correspondent to these different needs there must be two different authorities. Ecclesiastical supremacy includes power to define the faith, to make law for the Church, and to excommunicate. It is impossible that these powers should belong to Kings severally, since it is God's will that there should be, in Christendom, one Church, one faith, one baptism. No such thing can possibly exist in a system of national churches.

If it seem probable that the majority, even of more or less educated English people, took little interest in any sort of religious controversy, it is certain that they were not the least interested in what Catholics had to say. The whole matter was, for them, a thing judged and settled long ago. But the more intelligent might well have been interested by the controversy that broke out among the Catholics themselves in connexion with the oath of allegiance of 1606. Not that dispute among Catholics over the question of the Pope's right to depose Princes was a new thing, even for England. The controversy of James I's reign was a continuation of that of the last years of Elizabeth. But it now concerned a more complicated question and covered far more ground.

It was an old project of Bancroft's that James put in execution. Bancroft had long been convinced that the mass of English Catholics were fundamentally loyal. In 1606, after much deliberation, a new form of oath of allegiance was finally drafted and offered to the English Catholics They were, of course, required to swear they believed that the Pope had, in no case, power to depose the King or release his subjects from allegiance. They were required, in addition, to swear that they

[1] *An Answer*, ch. I.

repudiated and abhorred 'as impious and heretical this damnable doctrine and position that princes that be excommunicated or deprived by the Pope, may be deposed or murdered by their subjects or any other'. It was understood that those who took this oath would obtain some degree of freedom from molestation and, at least, practical exemption from recusancy fines. On the other hand, the Pope not only forbade the taking of the oath, but described it as involving declarations plainly against faith and salvation.

In Parliament that same year, a bill increasing the penalties to which Catholics were on occasion liable was passed by the Houses. It was allowed to become law, and seems to have been used by the government to increase pressure. For the Catholics of England a cruel situation was created. That between 1606 and 1610 a large number took the oath is not at all surprising. Nor is it surprising that their right to do so, in spite of Papal prohibition, was vigorously defended by priests of their Church. The notion that Catholic opinion had at any time been united in favour of the Pope's claim to depose Princes is a Protestant delusion or pretence.

It might be said that those English Catholics who maintained against the Pope the lawfulness of taking the oath were merely expressing a view commonly or even usually held among the Catholics in France. But that does not state the case truly. The Gallican Catholic believed in the absolutism of his King, and maintained that the King's rights altogether excluded the Pope from the temporal field of action. It was hardly possible for the Catholic subjects of a heretic King to take such a view. The question in England was whether a Catholic is justified in flatly disobeying the Pope and whether he has a right to characterize as heretical and damnable the doctrine that a Pope can release subjects from their allegiance. For English Catholics, these questions could not be answered merely by reference to the power of the Crown. There was published in 1612 a translation of a treatise by a French Gallican, Jean Bédé; no doubt intended to encourage English Catholics to take the oath. But it presented a peculiarly French and extreme Gallican view and would have been of little assistance. It must be remembered, too, that while the French Gallican had the support of his King and of all the supreme law courts of

France, the English Catholic, who defied the Pope, was isolated. He was liable to excommunication and citation to Rome, and he had no guarantee that his government would protect him. He had, it seems, to be a brave man.

The unfortunate Archpriest for England, George Blackwell, took the oath himself and exhorted his fellow Catholics to do the same. Dismissed from his office by the Pope and attacked by Bellarmine, he seems to have had little to say for himself. He declared that the Pope had acted on a misunderstanding of the facts of the case and that, this being so, his judgement was not really relevant. He asserted, also, that the Pope can have no power to command men to do what is absolutely wrong. He was of opinion that a general refusal of the oath would lead to the extinction of Catholicism in England.[1] Unfortunately for him, the Pope took an exactly opposite view.

But the chief champion of the right of English Catholics to take the oath was Roger Widdrington, a Benedictine on mission in England. Between 1611 and 1620 he published a series of tractates in defence of his position. His arguments were most fully set forth in the last of these publications, in 1620, entitled, *A New Year's Gift for English Catholics.*[2] Widdrington's argument was to a marked extent technical and far more ingenious than convincing. It included at least some amount of sophistry and quibbling. For instance, he says that even though you believe that the Pope has power to depose Princes, you are entitled to swear that they may not be 'deposed or murdered' so long as you believe that they may not be murdered.[3]

But with the detail of Widdrington's argumentation we are not here concerned. It has little reference to or connexion with anything political. His conclusions, however, have a certain importance. He asserted that no one is bound by any Papal judgement based on misinformation or misapprehension of facts. He declared that the Pope has no right to act upon any claim that is, or has been, disputed by learned Catholics;[4] and that in no case has he a right to act as judge in his own cause by

[1] See *A large Examination of Mr. George Blackwell*, 1607, pp. 6–8.

[2] The value of Widdrington's services from its point of view was recognized by the government in England. In order to render innocuous a probable summons to Rome, he was forbidden to leave the country; and he was granted a licence to hold Catholic services in private houses. He died in 1640.

[3] *A New Year's Gift*, pp. 92–6.

[4] Ibid., p. 52.

pronouncing judgement on his own claims.[1] He asserted that it is doubtful if the Pope can decide doctrinal questions without a General Council.[2] In that connexion he referred to Gerson, to Nicholas of Cusa and to John Major.

So far as they represent a body of Catholic opinion in England these assertions have a certain importance: and it should be added that they were very fully reproduced in a book published in 1634.[3] They would have been of far greater practical importance had they done anything to dissipate popular illusions about the political beliefs of Catholics. But very few except among the Catholics had any acquaintance with Widdrington's writings. Neither they nor the Gallican treatise of Jean Bédé that had appeared in English seem to have made any impression on opinion in England generally.

[1] *A New Year's Gift*, p. 64. [2] Ibid., p. 65: wrongly numbered 69.
[3] *A Patterne of Christian Loyaltie*, 1634. Published as by William Howard.

Chapter VII

LATER DEVELOPMENT UNDER JAMES I

BANCROFT had denied absolutely that it was for Parliament to define true doctrine and right ritual. Hardly less completely had Carleton and Field set aside the possible claims of the Crown. According to them it appeared that the main function of the King in relation to the Church was to give legal sanction to law made by the clergy. Their repudiation of traditional Elizabethan Erastianism was all but complete.

The appointment of George Abbot as successor to Bancroft in 1610 looked, after the event, like a gross inconsistency on the part of King James. But it is the fact that believers in Calvinistic theology were not necessarily opposed to the Church policy of Bancroft. James may well have imagined that Abbot's theological Calvinism was no more dangerous than that of Carleton or Downame. Actually, however, the Calvinism of Abbot, whom Clarendon described as a man of 'a very sour aspect which, in that time, was called gravity', was of another type. Though, presumably he did not believe in the *jus divinum* of the Presbyterian system, he was certainly in sympathy with the Disciplinarian Puritans. His appointment as Archbishop led to a widespread relaxation of the discipline to which Bancroft had been subjecting the clergy. In spite of the efforts of certain of the bishops, the Church began to slip back into its earlier confusion. But it was, perhaps, not only the Puritans who benefited by the change. How far Bancroft would have approved a movement that produced such a book as Cosin's *Devotions* is at least doubtful.

The assertion of the apostolic origin of episcopacy led, naturally, to an increasing insistence on the continuity of the visible Church from the earliest times. The conception of that continuity, both as a fact and as a mark of the true Church, led further to increasing insistence on the importance of the testimony of the early Fathers and to resort, even, to the medieval schoolmen. Thus was effected, as has been pointed out, a break with those who, as did the Calvinists, regarded the

Reformation as a clean break with the past. The author of the *Answer* to the second of Downame's *Two Sermons*, declares that the true doctrine of Christ had been overlaid and lost almost at the outset, gradually rediscovered by the efforts of Wyclif, Huss, Luther and Zwingli and finally set forth in its fullness by Calvin. Between St. Paul and Wyclif Christianity was popishly and utterly corrupted.

On the other hand, the newer school, which by 1625 seems to have included most of the more learned clergy, saw the Church not as a practically new construction, foreshadowed by Wyclif, but as an improved form of that which had existed through the Middle Ages. Field and Sanderson agreed in asserting that the Reformation had involved no fundamental change in the English Church but had merely removed accretions.[1] This view, though it could hardly have been taken by Carleton, was being taken to an increasing extent among the more educated of the clergy.

In close and natural connexion with this conception went increasing stress on the Catholic idea of priesthood and of sacrament and, consequently, on the importance of symbolic, or at least appropriate, ritual. More important still was the drift of opinion in the direction of what, in England, was called Arminianism. There was a growing inclination to doubt or even to deny altogether the Calvinistic doctrine of grace and predestination.[2] With the development of this, the break with Calvinism became complete.

A neo-Catholic faith, it may fairly be said, was in process of formation. The first centres of this Anglo-Catholic movement were, it seems probable, the Universities.[3] It had spread far beyond them by 1625. Not only were the Presbyterians necessarily its enemies, but it was bound to antagonize finally every variety of Calvinist. Its coming ascendancy in the Church was sure to strengthen the Puritan opposition. In almost equal degree it was antagonistic to the earlier Erastianism. Not only so, but the increase of clerical claims involved in it, was sure to lead to a corresponding increase of anti-

[1] See Field's *Of the Church*, I, p. 85 et seq. Sanderson expressed the same view in a tract, called *A Discourse concerning the Church*, published only in 1688 and included in vol. V of his *Works* (1854).

[2] The term Arminian as applied to the High Church party in England is accurate only in respect of this point.

[3] The positive evidence of this seems, however, hardly sufficient.

clerical feeling. Partly because of all that, it must, I think, be regarded as far the most important intellectual and religious movement of the time. The publication in 1624 of Montague's *New Gagg* led to a conflict of opinion that was at once sharp and highly significant.

Chapter VIII

THE MONTAGUE AFFAIR

§1. THE *NEW GAGG* AND THE *APPELLO*

In 1624 Richard Montague was, it should be remembered, already distinguished as a classical and patristic scholar among the small body of learned clergy. He had assisted Henry Savile in the preparation of his edition of Chrysostom, he had himself edited certain writings of Gregory Nazianzen and he had published criticism of Selden's view of tithe. His preferments were numerous and he seems to have been already marked out for a bishopric. When, in 1628, Charles I made him a bishop, he was not rewarding an obscure divine for an attack on Calvinism. He was, it may rather be said, refusing to allow the attacks on Montague to prevent his doing what, in due course, he would, almost certainly, anyhow have done.

Montague's *New Gagg for an old Goose* was written as a point to point answer to a very indifferent Roman Catholic production. It is cleverly and vigorously written but disfigured by the writer's coarsely expressed contempt for his opponents and, at times, by a rather vulgar facetiousness. These unpleasing qualities reappear in the *Appello Caesarem*, which he published in 1625, in response to the attacks made upon him. In dedicating the book to King James, Montague quoted the well-known words of William of Occam: 'Domine Imperator, defende me gladio et ego te defendam calamo.' In that book he attacked the Calvinists, or, as he calls them, Puritans, directly. The offensive and provocative tone of both these treatises was evidently deliberate. Montague's boldness indicates that he expected the strong backing that he in fact received.

No sort of political theory appears in these writings. No assertion was made concerning the right relation of Church to State that was not becoming usual. It was a matter of course that Montague should hold that the secular authorities had

no more right authoritatively to decide right doctrine than had Calvin. It is, he declared, for the Church itself to interpret Scripture; and by the Church he evidently meant the clergy.[1] Its traditions as well as its pronouncements bind and oblige us all. It was equally a matter of course that a divine of his school of thought should declare that 'the Church hath been visible since there was a Church.' We English Churchmen 'claim and prove a succession and therefore needs a visibility from the time of the Apostles.' The true Church is always and has always been episcopal. All this had been said many times and Montague here went no further than Carleton or Field, if even so far.

Provocative as was the general tone of Montague's writings, his statement of the views of his party was nevertheless moderate. He speaks of 'the incomparable Hooker' and it is worth noticing that much of what he said is to be found in the *Ecclesiastical Polity*. He did not go far enough to satisfy the extremists of his own school. At Cambridge, it appears, there were some who were annoyed by his denial that the English Church taught the necessity of auricular confession.[2]

It may, indeed, fairly be said that Montague was arguing, above all, for a reasonable suspension of judgement on highly controverted questions. He maintained that concerning doctrines of grace and predestination and on the mode of Christ's presence in communion, the Church had made no pronouncement. So also, he asserted, the question as to the need of confession to a priest, the question as to the validity of prayers for the dead and of the possibility of angelic or saintly intercession, had never been authoritatively decided. All these therefore remained doubtful questions, for where the Church has not spoken, no man is bound. 'As for private opinions,' he declared, 'I am bound to none; no, not to my own.'[3]

Yet, actually, no statement so challenging and expressing views so 'advanced' had before been made. The purpose of the *New Gagg* was to show in what respects the teaching of the Church of England differed from that of Rome. What caused so much scandal and irritation was the fact that, according to

[1] *New Gagg*, ed. 1624, ch. II, p. 14.

[2] See Mullinger, *History of Cambridge University*. See, also, Tatham, *The Puritans in Power*, 1913, pp. 98–100.

[3] *New Gagg*, p. 328.

Montague, the difference was relatively small. It is not, however, easy to understand how even the dullest or most prejudiced reader could have supposed that Montague was actually a Roman Catholic. 'If that is to be a Papist,' King James is said to have remarked, 'so am I a Papist.'

'All is not Popery', says Montague, 'that Papists say':[1] an obvious truth that Calvinists seem to have had difficulty in recognizing. The Church of Rome, he explained, is a 'true', though not a sound, Church; 'a part of the Catholic, though not the Catholic Church. . . . In essentials and fundamentals they agree' with us.[2] The Pope may fairly be called an Anti-Christ, but there is no reason to suppose him the Anti-Christ foretold in Scripture. It is said that this assertion, together with Montague's personal, though unfriendly, relations with Catholics, was sufficient to produce a belief that he was himself, secretly, a Romanist. In spite of the ignorance and silliness involved this may have been the case.

Repudiating alike the doctrine of transubstantiation and what he calls the doctrine of Zwinglius, Montague declared that all argument about the mode of the Real Presence involved men in 'inexplicable labyrinths', leading nowhere.[3] But England, he asserted, differs from Rome only about the Modus. He insisted that a priest of the Church 'hath power and authority from God to forgive sins'[4] and argued that this was clearly taught in the Prayer Book. The Church of England, therefore, he maintained, while holding that confession to a priest is 'not of absolute necessity' recommends the practice to all and in some cases urgently.[5]

Montague flaunted his contempt for the dogmatism and pretensions of Romanists and Calvinists alike. In the *Appello* he was concerned with the latter. He expressed doubt of the essential doctrines of Calvinistic theology. Calvin's theories concerning grace and election were, he declared, mere 'scholastic speculations'.[6] The whole question of free will is one on which silence is best, 'fitting rather schools than popular ears'.[7] He frankly repudiated personal belief in the Calvinist doctrine.

[1] *Appello Caesarem*, 1625, p. 118. [2] Ibid., p. 113.

[3] *New Gagg*, pp. 251–2. Hooker also had deprecated controversy on the subject. 'Whether with change or without alteration of the elements,' he had written, 'we need not greatly care nor enquire.'—*Ecclesiastical Polity*, V, p. 352.

[4] Ibid., p. 78. [5] Ibid., p. 83. [6] *Appello*, p. 42.

[7] *New Gagg*, p. 107. See also the *Appello*, ch. VIII.

'I am none, I profess, of that fraternity: no Calvinist, no Lutheran, but a Christian.'[1] He made a vigorous attack on the partially conforming Puritan ministers of the Church. You pretend conformity to the Church of England, he told them, 'but for her doctrine, you waive it, preach against it, teach contrary to that which you have subscribed'. He charged them with insinuating foreign doctrine into the English Church and with aiming at establishing a 'foreign Discipline . . . with Popes in every parish'.[2] The Puritans, he says in effect, would bluff us all into supposing that they are the only professors of true Protestant doctrine and that their strange private conceits are the doctrines of the Church of England.[3] To the charge of being himself Papist or Arminian, he answered contemptuously. 'I flatly defied and opposed the one and God in Heaven knoweth that I never so much as yet read word in the other.'[4]

Numerous answers to Montague's books were quickly published. Matthew Sutcliffe, Dean of Exeter, Samuel Ward, Daniel Featley, Henry Burton, Francis Rous and Bishop George Carleton all wrote replies to him. Of these the most reasonable and the most significant is Carleton's.[5] He endeavoured to show that the Calvinist doctrine of grace and predestination had always been the received doctrine of the Church of England since the Reformation. Montague, he maintained, was trying to introduce Pelagian and Arminian doctrines and absurdly pretending that, what had long been orthodox was merely the opinion of a 'Puritan' section. 'Hitherto,' he declared, 'there was no Puritan doctrine known.'[6] The beliefs impugned were simply those of all reformed Churches. He charged Montague with endeavouring to 'make divisions where there were none'.[7] The result of such an attempt, if successful, would be not only to bring about serious contention in England, but to open a wide breach between the English Church and the Protestant Churches of the continent.

Carleton's view was one which could reasonably be taken and it was reasonably and temperately stated. But all that

[1] *Appello*, p. 45. [2] Ibid., ch. V, p. 44. [3] Ibid., Epistle Dedicatory.
[4] Ibid.
[5] *An Examination of those things wherein the Author of the late Appeale holdeth the doctrines of the Pelagians and Arminians to be the doctrines of the Church of England*, 1626.
[6] Ibid., p. 5. [7] Ibid., p. 78.

could really be shown was that many, perhaps most, of Elizabeth's bishops had held Calvinistic doctrines and that the Thirty-nine Articles ambiguously favoured them. Carleton argued from the Articles and Montague from the Liturgy and its rubrics. Carleton ignored the fact that Calvinistic theology had never had much hold on the mass of opinion. He was ignoring, also, the fact that the drift of opinion among the learned clergy was becoming definitely antagonistic to Calvinism. It is a little curious that he should have declared that Montague was too young a man to voice decided opinions upon such questions.[1] It was just among the younger divines of the time that Montague found his chief supporters.

It seems strange, too, that Carleton should not have seen that Montague, while repudiating belief in Calvinistic predestination and free will, had not asserted any particular belief of his own on the subject, Arminian or other. He was, no doubt, trying to free the Church from the incubus of Calvinist dogma. He was not trying to substitute for it dogma of his own. He denied that English people were under any obligation to accept Calvin's opinions; he claimed a right to criticize them and he advocated a suspension of judgement. He did not denounce 'Puritans' for holding Calvinistic views; what he denounced was the pretension to compel acceptance of them and suppress criticism. Implicit in his attitude, as in that of all those of his way of thinking, was the contention that it is irrational to make membership of a national Church conditional on the acceptance of definite opinions on highly obscure questions. Montague did not claim freedom for himself only: against Catholics on one side and Calvinists on the other he claimed a certain freedom for all. Of yet more value, perhaps, was his clearly implied plea for a suspension of judgement. Montague, it may be fairly said, was, to a limited extent, an advocate of intellectual freedom. So far as that was so, it was he, and not those who denounced him, who was on the line of advance.

[1] *An Exanination*, p. 2.

§2. THE REACTION OF THE HOUSE OF COMMONS

Montague's books at least served modern purpose by irritating the House of Commons into a tolerably clear expression of its profound antagonism to the new movement of religious thought. The reaction of the House to his writings is important as evidence of the attitude of the classes it represented. Laud, later, it is clear, only further exasperated a deep-seated antagonism.

The House took action very soon after the publication of the *New Gagg*. As to what should be done about it, there was never complete agreement. Some of its members, at least, seem to have had a wholesome sense of its incompetence in matters theological. Yet there appears to have been almost unanimous agreement that the public expression of such opinions as Montague's was intolerable and ought to be suppressed. Shocked and somewhat bewildered, the House felt that it must say something and did not know quite what to say. Excited and inconclusive debate led finally to the formulation of charges against Montague that were almost entirely irrelevant to the issues he had raised. In July 1624 he was charged with dishonouring the late King, with disturbing Church and State by raising factions and divisions, and with contempt of Parliament. Evidently these charges do not really express what was in the minds of members. They express little more than a desire to punish Montague and secure the suppression of similar views. The report of a committee of the House, in 1626, to the effect that Montague had given encouragement to Popery and inclined people to scoff at sermons, was hardly less inept.

The first of these charges can only have been designed to create prejudice. The second was made, in a restricted sense, by Carleton. But the House seems to have understood it in a sense that was hardly Carleton's. In a speech of June 1625, Eliot insisted on the importance of religion to social order. 'Religion it is', he said, 'that keeps the subject in obedience.' Two things are, above all, necessary: the purity and the unity thereof. 'For where there is division in religion . . . it makes distractions among men. It dissolves all ties and obligations.' As to the purity of the religion established by law in England,

he had, he declared, no doubt. 'For the unity, I wish posterity might say we had preserved for them that which was left to us.'

Eliot's words seem to have expressed the general sense of the House. Yet it is not easy to imagine where he found that unity which he declared had been left to them. Never since the days when Carlstadt confronted Luther had there been agreement among Protestants. Never, certainly, since 1570, had controversy ceased within the Church of England. All through the latter part of Elizabeth's reign divisions had been growing deeper. Montague's books were but a symptom of how deep that division had become. The House of Commons was refusing to face facts. It was clinging to the fiction of a 'Protestant Religion,' established by law in England and one with the religion of Protestants abroad. For all that, Eliot's words expressed a sense of a truth. The House was confronted by a type of religion, very old but relatively new and a type that seemed to it really dangerous.

The charge that Montague had treated Parliament with contempt was defended chiefly on the ground that Montague had published his *Appello* while the *New Gagg* was still *sub judice* in the House of Commons. As Sandys pointed out this was almost equivalent to saying that a man on trial must not defend himself. But what was behind the technical point was probably resentment at Montague's clearly implied assertion that it was not for Parliament to determine doctrine for the Church. It was so that the charge seems to have been understood by Bishops Laud, Buckeridge, and Howson, who, in August 1625 wrote to Buckingham in defence of Montague. 'When', they wrote, 'the clergy submitted themselves in the time of Henry VIII, the submission was so made that if any difference, doctrinal or other, fell in the Church, the King and the Bishops were to be judges of it in a National Synod or Convocation. . . . But the Church never submitted to any other judge, neither indeed can she though she would.'[1]

Whatever exactly was thought in the House of Commons, Laud and his colleagues had gone to the main point. It was perfectly clear that the objection of the House of Commons

[1] This letter, dated August 2nd 1625, is given in Laud's *Works*, vol. VI, p. 244 *et seq.*

was not really to Montague's conduct but to his religion. Its action implied that his religion could not even be tolerated in the Church of England. It was answered that such questions were beyond its competence. It was for the clergy, acting with the King, to decide whether Montague's views were tolerable or not. When, in June 1626, a committee of six bishops reported that Montague had not affirmed anything to be doctrine of the Church which actually was not, that pronouncement was not conclusive on any theory. But the opinion of the bishops was, at least, relevant; in the view of the High Churchman that of the House of Commons was not. Coke, in 1625, had declared the whole question to be simply one of law. But if the theory of Bancroft, Carleton and Field, Laud, Howson and Buckeridge, were valid, then even the Thirty-nine Articles derived binding force not from the Act of Parliament but from the assent of Convocation.

Nothing could well have come of the feeble and confused action taken against Montague; and nothing did come of it, unless his appointment to the Bishopric of Chichester, in 1628, be taken as a result. That appointment has been described as foolish and impolitic. But it was only one of a series of similar appointments and promotions in the early years of Charles I's reign. The King was making very clear his determination to secure ascendancy in the Church for the High Church party. By 1628, if not earlier, he was committed to a religious and ecclesiastical policy in direct opposition to the views of the House of Commons. The results were disastrous in more than one way. The King's action, completely unintelligible to the House, excited suspicion of his motives and assisted the development of the delusion of a Catholic conspiracy against the religion and the liberties of England. More and more, the strictly constitutional issue became complicated by illusions and irrelevancies.

In the Resolutions of Religion drawn up by a sub-committee of the House of Commons in February 1629, it was declared that 'the subtle and pernicious spreading of the Arminian faction . . . is of itself sufficient to ruin our religion; by dividing us from the Reformed Churches abroad and separating amongst ourselves at home, by casting doubts upon the religion professed

and established; which, if faulty or questionable in three or four Articles, will be rendered suspicious to unstable minds in all the rest and incline them to Popery, to which these tenets, in their own nature, do prepare the way'. The drafters of these Resolutions spoke of 'an extraordinary growth of Popery' in England and laid great stress on the advance of Catholicism on the continent and its prevalence in Ireland. If 'our religion' is suppressed abroad, lost in Ireland and undermined in England, 'we shall come into great danger'. They complained of 'the publishing and defending points of Popery in books and sermons without punishment' and of the encouragement of the Papists by favour shown to those 'who have published and maintained such Papistical, Arminian and superstitious opinions and practices.' They complained, also, of the introduction of 'sundry new ceremonies', of the removal of the communion table to the east end of the chancel, and of images and pictures in churches. They demanded the exemplary punishment of teachers of Popish opinions and practisers of superstitious ceremonies.

Charles and Laud, no doubt, neither estimated rightly the strength of the feeling that had been aroused nor understood its nature. Yet that they failed to understand the attitude assumed by the House of Commons is not surprising. In explanation of what was meant by 'our religion' the Resolutions referred to the Prayer Book, the Homilies, the Catechism, the works of Jewel and the Lambeth Articles of 1595. Pym declared that 'our religion' was to be found expressed in the Thirty-nine Articles, the Catechism of Edward VI, the Lambeth Articles and, oddly enough, the writings of Martin Bucer. But neither the Lambeth Articles nor the works of Jewel or Bucer were in any sense authoritative and the arguments of the High Churchmen were based largely on the Prayer Book. Nor was it very easy to see what lay behind the talk about Popery and Arminianism.

'They reckoned for points of Popery', says Heylyn, writing long afterwards, 'the doctrine of the perpetual visibility of the Church of Christ . . . the lawfulness of images; signing with the sign of the cross; confession and sacerdotal absolution; the Real Presence; the reward of good works; the sacrament of orders. . . . Whosoever held any of the points aforesaid . . .

contrary to the sense of Calvin, must presently be accused of Popery.'[1] The statement seems to be roughly accurate.

From the point of view of the ordinary member of the House of Commons, it certainly seems that there was little difference between Montague and a Roman Catholic. By his own admission Montague's doctrine of the sacrament of communion was hardly intelligibly different from that of Rome. He favoured confession and held that priests had authority to forgive sins; he favoured the use of images in churches and was, at least, not averse to the invocation of saints; he regarded the central doctrines of Calvinist theology as, at best, mere speculations. From such a position to that of the complete Romanist the House saw that transition was relatively easy. In 1629 the House of Commons was Erastian rather than Calvinist, just as it certainly was in 1645. But it seems, vaguely, to have seen in Calvinistic theology a bulwark against the Romanism it so greatly feared. It was criticism or denial of Calvin's doctrine of predestination and grace that the House understood by Arminianism. It saw that denial as the first step to Popery. Rous spoke of Arminianism as an error 'that makes the grace of God lackey after the will of man. An Arminian', he declared, is the spawn of a Papist 'and if warmed by favour will hatch into one'. Roman Catholicism was imagined by the House as a system built up on superstition, idolatry and imposture. Montague, it seemed, repudiated the imposture, but retained the idolatry and superstition.

It must, I think, be admitted that, in a very real and important sense, the House of Commons was right. The religion of Montague and Cosin, of Laud and Wren, was far nearer to Rome than to Geneva. To speak of these men as Papists was inaccurate and to think of them as secret converts to Rome was absurd. But it would hardly have been absurd to say that they were not Protestants. That ambiguous term, if applied both to Cosin and to Calvin, can only be defined by negatives.

It was to a type of religion, or of religiousness, that the House objected; and their name for it was Popery. Its devotional side was expressed in John Cosin's *Collection of Private Devotions*,[2]

[1] *Cyprianus Anglicus*, 1671, p. 121.

[2] Cosin (1594–1672) had been secretary to Overall and was chaplain in Neile's household. He became Master of Peterhouse in 1634 and was made Bishop of

published in 1627. That book was perhaps more significant of the development of an Anglo-Catholicism than anything of Montague's writing. 'The soul which guided itself by his direction', says Wakeman, 'was taught to join in the old canonical Day Hours of the Church, to say the seven penitentional Psalms, to guard against the seven deadly sins, to practise the corporal works of mercy, to prepare itself by careful self-examination and if desirable, by private confession, for receiving the Body and Blood of Jesus Christ in the Holy Communion.' 'Union with God', Wakeman added, in words that well express the conception not only of Cosin but of Laud, 'was to be won not by an election, but by the life-long struggle of the obedient soul, strengthened and armed by all the grace-giving powers of the Church.'[1]

'Cosin's book', says Heylyn, 'startled many at the first.' It may well have done so. It must have strongly tended to confirm the House of Commons in the belief that the Laudian party was essentially Papistical. It was, of course, denounced in the House, but the dissolution of 1629 prevented any action being taken. It was abusively attacked by Prynne and by Henry Burton, with an utter lack of comprehension.[2] But the type of religion represented by Cosin and by Laud, however objectionable to the House of Commons, was a logical, and I think, an inevitable development of the position that existed under Elizabeth. Viewed as a whole the Elizabethan settlement was not consistent either with Calvinism or with Anglo-Catholicism. Its conflicting elements can only, if at all, be reconciled by a strictly Erastian theory which was not that of either. The claim of the House of Commons to rule out the religion of Montague or Cosin, as barred by law, was not technically justified.

Whether, in some ultimate sense, Laud or Calvin, or neither, were in the right, is not, of course, a question here. Differences of temperament were, in any case, bound to issue in different

Durham at the Restoration. He was a liturgical scholar of high rank. As Bishop he did much to promote education in his diocese.

[1] *The Church and the Puritans*, p. 121. Wakeman, I think, understood Laud far better than some historians have succeeded in doing. I cannot, however, quite agree with him that there was nothing in Cosin's book 'that could with any appearance of truth be called Popish'.

[2] *A Brief Survey and Censure of Cozens his cozening Devotions* was the title of Prynne's tract, published in 1628.

types of religion. Intellectual activity was bound to lead to criticism of all traditional beliefs, including Calvinism and much more than that. To all such movement the House of Commons uncompromisingly opposed itself. It declared that no doubt was to be cast upon any part of what it conceived as the religion established. No denial, it appeared, even of the Lambeth Articles, which were certainly not technically binding on any one, was to be tolerated. 'Whosoever', declared the famous Protestation of March 2nd 1629, 'shall bring in innovation of religion or . . . seek to extend or introduce Popery or Arminianism or other opinion disagreeing from the true and orthodox Church, shall be reputed a capital enemy to this kingdom and commonwealth.'

It might well have been answered that the capital enemies of this, or any other, commonwealth, are those who obstruct men's search for truth. The House of Commons was protesting against the inevitable and trying to keep back the tide with a broom.

This judgement, however, only very partially represents the complex fact. I do not think that the House of Commons was so intolerant and reactionary as it made itself appear. It was, indeed, utterly intolerant of anything it associated with Rome. It understood that the Arminian doctrine concerning grace and free will was substantially the same as that of the Roman Church. That alone was sufficient to cause it to insist on adherence to the Lambeth Articles. But the Calvinism of the House was quite superficial. It is highly improbable that the average member of it knew or understood much of Calvin's theology. Quite certainly he did not understand how inconsistent was Calvin's Calvinism with his own Erastian views.

The House of Commons was addressing itself to particular circumstances and to what it regarded as a public danger. It was thinking politically far more than religiously and it was certainly not thinking about freedom of inquiry in general. Its attitude was no doubt determined largely by crude conservatism; that is, by habit and by contentment with the things it was used to. But over and above the mere influence of habit was fear. Three things seem to have mainly determined the attitude it adopted: fear of Roman Catholicism abroad and at home; fear lest the spread of an ecclesiastical party in alliance

with the King should practically strengthen his constitutional claims and, in the third place, a strong and deep-rooted dislike of clerical interference and dictation.

Fear of continental Catholicism was in large measure traditional. The members of the House of Commons in 1628 seem to have derived their notions of continental politics largely from their fathers or grandfathers. They feared the Pope and that fear was closely connected with an ignorant fear of Spain. The House seems actually to have believed that, in 1628, the danger from abroad was greater than ever. There was, indeed, some excuse for that belief. The Protestant states of South Germany had collapsed and their territories were in course of being appropriated by their Catholic neighbours. An Imperial army had defeated the Danes and in 1627 lay before Stralsund. In France the political privileges of the Huguenots were being destroyed. But all the signs were misread because the House of Commons was under the impression that the policy of the Catholic governments was really determined by religion. The attitude of the South German Princes after the failure at Stralsund might have taught the House something, but apparently did not. It was really absurd to suppose that those Princes would ever willingly unite with the Emperor to break the powers of North Germany. Within a few years it was plain enough that, if the independence of North German Princes were in any real danger, the danger was from Sweden rather than Austria. The policy of Richelieu, again, seems to have been wholly unintelligible to the House of Commons. In any case, for England there was no danger whatever: or, if there were, it was not from 'Catholic' France or Spain but from 'Protestant' Holland. A combination of Catholic powers for the sake of destroying Protestantism in England was absolutely out of the question. Putting aside the Papal Court, I doubt whether there existed a statesman in Europe who cared a fig about England's curiously self-conscious Protestantism.

The House of Commons thought of Catholicism as damnable superstition and idolatry; but it thought of it above all as a political danger. The House was still acting, as Elizabeth's government had acted in the very different circumstances of 1559; under the impression that internal religious friction must be avoided if headway were to be made against the foreign

enemy. Accordingly it saw danger in any development that seemed to make transition to Romanism easier. England, it felt, must remain united in 'the Protestant religion' or risk losing its independence. So any one who made the road to Rome easier for English people was a capital enemy to this commonwealth. This, it seems, was the real meaning of the resolution of March 1629.

Along with all this went a profound anti-clerical sentiment. The mass of the landed gentry and of the ruling class in the larger towns seems to have resented any claim to interfere with or control their conduct, whether on moral or religious grounds, by any body of people speaking professionally in the name of God. They recognized an obligation to obey secular law; they resented interference under what purported to be divine law by people of whose credentials they were, at least, suspicious. This anti-clerical sentiment had, no doubt, latterly been aggravated by the claim persistently made since 1604, that the right to determine faith and ritual for the nation lay with the clergy alone.

Anti-clericalism in this sense must be definitely distinguished from Puritanism, if that term is to be of any use. Failure so to distinguish it leads to confusion. At a time when clerical domination seemed to be an acutal danger, such anti-clericalism was certain to coexist with every kind of scepticism and with every kind of irreligiousness. There was always far more anti-clericalism in the House of Commons than there was Puritanism of any sort. Puritanism in its strictly Calvinistic or Presbyterian form, was anything but anti-clerical. It merely objected to the domination of a clergy representing views other than its own. It must be added that, among the landed gentry, anti-clericalism was often associated with a determination to keep the parish clergy in a position of humble subordination to themselves. Teaching that tended to make the parish minister magnify his office, claim independence and even assume airs of authority, seemed to many a country squire to savour strongly of Popery.

It was with genuine public spirit that the House of Commons protested against official encouragement of a party the spread of which was, in its view, a public danger. It seems, indeed,

to be true that that danger was almost wholly imaginary. It is true, also, that the attitude it adopted was obstructive to the free movement of thought. But more remains to be said. The House was right in its perception that the religion of Montague and Cosin was fundamentally Catholic rather than Protestant. Even its notion that the High Anglican party was breaking up a unity previously existing had a degree of truth. Controversy under Elizabeth had been violent and bitter, but it had been controversy either between Protestants and Catholics or between Presbyterian and Erastian Calvinists. It was an Erastian form of Protestantism that had been orthodox in her time. No one could maintain that Elizabeth's bishops had been anything but Protestant. But even before the end of her reign a deeper division had begun to appear. The House of Commons of 1628 failed to realize that the earlier unity, such as it was, was already broken and beyond repair. Any attempt to restore it was obstructive, reactionary and necessarily futile. Eliot's pious wish must have seemed pathetically absurd even twenty years later.

On the other hand, if, in this respect, the action of the House of Commons was reactionary, it is nevertheless true to say that it was making a stand for freedom. It was resisting the claim of a clerical party to dictate in matters of faith and morals, just as, in 1645, it defeated the same claim made by the Presbyterians in the Westminster Assembly. In doing so it may fairly be said really to have represented the English people. England as a whole was, roughly speaking, anti-clerical, though certainly not Puritan. Its revolt against clerical dictation had begun long before the Reformation. It was not Puritanism but that ancient dislike and suspicion of clerical claims, that defeated in the seventeenth century all attempts to fasten ecclesiastical domination upon England.

Chapter IX

MANWARING AND SIBTHORPE

THAT the alliance established in the first years of his reign between Charles I and the High Church party must have influenced, more or less seriously, the political attitude of the Laudian clergy, there can be no doubt. Practically it bound them to give at least some degree of support to the claims of the Crown. But it certainly did not bind them to support an unexpressed and practically non-existent claim to pure absolutism. There was, indeed, nothing in the views of the High Churchmen as such that logically compelled them to hold any particular theory either of the English constitution or of the State in general. Actually it was not easy for them to reconcile their conception of the Church, and of the authority vested in the clergy, with the claims of the King as Supreme Governor. They met that difficulty by insisting that power to make law for the Church lay essentially with Convocation, while admitting fully that law so made could receive sanction only from the King.

Under the existing conditions the alliance seems to have been inevitable. Charles seems to have held High Church opinions himself, and naturally he sought to promote the interests of religion as he saw it. On the other hand, Laud, like Bancroft, saw in the royal supremacy and in royal prerogative an instrument for religious reformation precisely as the reformers of Henry VIII's time had done. All in turn, wisely or not, took what for the moment seemed the line of least resistance. But it was unfortunate that the King's patronage, leading, as it did, to increasing predominance of the party in the episcopate and among the higher clergy generally, should have coincided with the development of a constitutional crisis. As things were in the early years of the reign, the King's action was bound to lead to expressions of extreme opinion on the part of enthusiastic High Churchmen. There is, however, no reason to regard such utterances as expressing the views of the party as a whole.

In 1627 the two famous sermons of Manwaring and Sibthorpe, as in less degree the sermons preached by Laud at the opening of Parliament in 1625 and 1626, suggested that the High Church party was ready to go to extremes in support of a King who favoured them. Ascendancy of that party in the Church would, if that were the case, place in the hands of the Crown by far the most formidable instrument of propaganda that then existed. For of all means of political propaganda at the time the pulpit was the only one that could be very widely effective. How far the House of Commons of 1628 was distinctly aware of the danger is not clear. But certainly it saw that it could not afford to pass over without emphatic protest such preaching as Manwaring's. The impeachment of Manwaring foreshadowed that struggle for control of the pulpit which was an essential feature of the Civil War. It seems probable that but for the generally 'royalist' attitude of the High Church clergy, we should have heard much less of their 'Arminianism'.

In 1627 Roger Manwaring, a clergyman of no very special distinction, published two sermons[1] which, as a royal chaplain-in-ordinary, he had preached before the King. Their main purpose was to show that no resistance ought to be made to the levy of the forced loan of that year. The preacher's conclusion, that people who refused to pay were in danger of damnation, was uncompromisingly stated. This alone is perhaps sufficient to account for the fact that the sermons were printed by special command of the King and also for the exasperation of the House of Commons. But apart from the practical conclusion there is very little else in the sermons that is clear. Their language is verbose, confused and ambiguous. It is not easy, and it is perhaps impossible, to be sure what the preacher meant. When one has carefully read them the language used about them at the time, and later, appears extravagant.

All the old conventional commonplaces of the divines were repeated in extravagant and rhetorical phrase. The authority of the King is 'superhuman'. It is not in any sense derived from men. God has never given authority to any body of men: he gives it only to individuals, fathers and husbands and Kings.

[1] Under the title, *Religion and Allegiance*. Only the first is of any importance. The second adds nothing.

Authority over whole communities is given to Kings only. The King's authority cannot be said to be derived from law; for it is only the King's will that gives any binding force to law.[1] 'Not therefore in any consent of men, not in Grace, not in any municipal law or local custom, not in any law national nor yet in the law of nations, which consent of men or tract of the time hath made forcible; not, finally, in the Pope or in any people, is regal pre-eminency founded.'[2]

Except for the very rash declaration that authority over communities had been given only to Kings, all this amounts to no more than Overall had asserted. But the preacher went further. If the King, he declared, issue a command 'flatly against the law of God', we must disobey and suffer martyrdom. But if his command be not 'in any opposition to the original laws of God, nature, nations and the Gospel . . . no subject may, without hazard of his own damnation . . . question or disobey the will and pleasure of his Sovereign'. Parliaments, no doubt, are 'most sacred and honourable' institutions; but they can have no right to refuse to the King the supply he judges necessary. They were not established to control the amount of taxation, but merely 'for the more equal imposing and more easy exacting of that which unto kings doth appertain by natural and original law and justice'.[3] 'No power in the world or in the hierarchy of the Church can lay restraint upon these supremes.'

If all this verbiage means anything, it would certainly seem to mean that Manwaring claimed for the King a power unlimited save by the laws of God and of nature. That power would include a right to levy taxation of his own sole authority and at his own discretion. Yet he went on to argue that there can be no right to refuse payments demanded by the King, if the demand be fairly porportioned to capacity to pay and if the total sum demanded be not altogether out of proportion to its declared purpose. He argued further that since Parliament had sanctioned the war, it was morally bound to supply what the King judged necessary to sustain it. He even gave, as a reason for not resisting the loan, the fact that the country could well afford to pay. But if the King had power to tax at pleasure and if he were the sole judge of his necessities, all this

[1] *Religion and Allegiance*, p. 9. [2] Ibid., p. 17. [3] Ibid., p. 26.

argumentation was unnecessary. It suggests either that Manwaring did not mean all he said or that he did not quite know what he meant. Pym is said to have accused Manwaring of robbing the subjects of the property of their goods. That impression would have been fully justified had Manwaring explicitly declared that the King could rightfully tax his subjects at his own discretion. But he had not said so.

What Manwaring meant may, I think, be expressed as follows. The King, as the supreme magistrate, represents God, and resistance to his commands is sinful whenever they are not contrary to laws of God and nature. A demand for money out of all proportion to its purpose, or unreasonably heavy, would be an unjust command and contrary to the law of nature and might therefore justly be refused. Otherwise there must be no refusal, whatever the legal aspect of the case may be. Manwaring was not thinking in terms of law. To his mind, any question of duty must be judged by the law natural and the law revealed. The subject owes obedience apart from any human law. He meant no more than this; but this much it seems he must have meant.

If this reading of his sermons be correct, they have a real importance. For in that case it seems to be true that Manwaring represented a body of opinion among the clergy that cannot have been very large but was not inconsiderable. In 1627 Laud wrote to the Bishop of London that the King wished him, along with Laud himself, Neile of Durham, Buckeridge and Howson, to consider whether Manwaring's sermons were fit to be published. The King, he added, conceived them to be 'for his special service'.[1] It appears that Laud and his colleagues in the matter approved of the sermons.

The conclusion that Manwaring did actually represent some considerable body of opinion is, to some extent, strengthened by the fact that Robert Sibthorpe, a Northamptonshire rector, in an assize sermon preached and published somewhat earlier, had said substantially the same thing.[2]

As God's representative, Sibthorpe declared, the Prince 'doth whatsoever pleaseth him'. If he commands anything against the laws of God or of nature disobedience must be

[1] Laud's *Works*, VII, p. 7.

[2] *Of Apostolique Obedience.* The sermon was preached at Northampton, February 22nd 1627. On the title-page the author's name is spelt Sybthorpe.

passive only. Even 'if a prince impose an immoderate, yea an unjust tax, yet the subject . . . is bound in conscience to submit'.[1] To say this was to go farther than Manwaring. Yet Sibthorpe also declared that it is the duty of the Prince 'to maintain the fundamental laws and liberties of the kingdom'. As to what these are, or what is to happen if the Prince infringes them, no explanation is given. Like Manwaring, too, Sibthorpe began with general propositions and ended with circumstantial argument. His pronouncement is, on the whole, even more confused than Manwaring's. But he meant, apparently, exactly what Manwaring meant.

On the whole, therefore, it may fairly be said that the impeachment of Manwaring was not uncalled for. It might even be held to be justified by the need of emphatic protest against the forced loan. In any case it is clear that the House of Commons could not afford to allow the King to make of the clergy instruments of propaganda in favour of his claims.

[1] *Apostolique Obedience*, p. 15.

Chapter X

ARCHBISHOP LAUD

So much has been written in modern times about Laud that it would seem that some approximation to agreement should have been reached. Yet the estimates of his work, aims and achievement by modern writers differ, in some respects, in almost as extreme a degree as those of his contemporaries. More significant, and to my mind unpleasantly significant, is the fact that they differ in the same kind of way. They seem invariably to be correlated with the political or religious views of the writers concerned. To some extent this, no doubt, is logically unavoidable. But we must beware lest our own indemonstrable opinions and unaccountable sympathies prevent us from seeing things justly. I feel no assurance that I shall be able to avoid the danger. To read Prynne and Burton is to be influenced irrationally in favour of Laud.

But, at least, we agree nowadays that Laud was an honest, sincere and deeply religious man, who worked hard and consistently for his ideals, with little hope of achieving much of what he aimed at. We agree too that he was outrageously maligned and grossly misunderstood. Few, I imagine, would now defend the iniquity of his trial. We must agree, also, whatever we think of his aims and action in relation to the Church, that he rendered real services to learning and therefore to civilization. He aimed at widening the field of investigation at the Universities and at making the ordinary teaching more intelligent. At Oxford he procured a codification of the law of the University which was badly needed. He was particularly anxious to stimulate the study of philology, no doubt with a view to the better understanding of the Scriptures. He was perfectly aware of the unsatisfactory nature of the text. He desired to secure the collation of the Hebrew text with the Syriac and other versions and the critical and comparative study of all the manuscripts. With this end in view he founded, in 1632, a chair of Arabic at Oxford.[1] He was himself a

[1] The importance of Arabic in this connexion had been pointed out by Joseph

bibliophile and a collector of books and manuscripts and he gave largely. He gave to the Bodleian some 1,300 manuscripts in twelve languages, largely Oriental; and he enriched also the library of his own college, St. John's. His restoration of St. Paul's, violently objected to by people called Puritans,[1] must also be reckoned as a service to civilization, even though the great medieval building is now lost to us. About the value of his work in these respects there should be no dispute.

The son of a Reading tradesman, William Laud was born in 1573. As early at least as 1604 he had become one of the leading spirits of the growing High Church movement at Oxford. His insistence on episcopacy as a mark of the true Church and on its perpetual visibility, and his clear sense of what was involved in these beliefs, aroused violent opposition in the University. In spite of that opposition he became President of St. John's in 1611. In 1616 James made him Dean of Gloucester; and when Laud moved the communion table to the east end of the cathedral, meetings were held in Gloucester to denounce such Popery and the Bishop refused to enter the church. In 1621 Laud became Bishop of St. David's. But it was not till the accession of Charles I that his influence in the affairs of the Church began to become paramount. From the beginning of the reign he seems to have practically disposed of the Crown's ecclesiastical patronage. In 1628 he was made Bishop of London and in 1633 Archbishop of Canterbury. 'I thank you heartily', he wrote in reply to Wentworth's congratulations, 'for your kind wishes to me, that God would send me many and happy days, where I am now to be. . . . But truly, my lord, I look for neither; not for many, for I am in years; not for happy, because I have no hope to do the good I desire. . . . I have had a heaviness hang upon me ever since I was nominated to this place; and I can give myself no account of it, unless it proceed from an apprehension that there is more

Scaliger and Casaubon. William Bedwell of Trinity, Cambridge, had compiled an Arabic lexicon and published an Arabic version of St. John's Epistles. He died in 1632.

[1] He organized collections in every diocese for the repair of the great fabric and spent about £1,200 of his own on it. His 'restoration' included, unhappily, the erection of a 'stately portico', with Corinthian columns, at the west front. Heylyn says that there were 'Puritan' ministers who declared that it would be 'more agreeable to the rules of piety to demolish such old monuments of superstition and idolatry'.—*Cyprianus Anglicus*, p. 209, ed. 1671.

expected of me than the craziness of these times will give me leave to do.'[1]

Laud has, naturally , come to be regarded as above all others representative of the High Church movement of his time. His influence with King Charles, and his position as Archbishop later, made him practically its head: he was its right hand in action. But how far his ideas upon strictly political or constitutional questions were typical of those of his party generally is somewhat doubtful. Certainly his mode of thinking was very unlike that of Jackson or Sanderson. On the other hand, Sanderson's mode of thought was far too abstract to be typical of that of any large body of people. With a certain amount of reservation Laud's attitude on the constitutional issues of the time may, I think, be accepted as representative of his party. It must, however, be remembered that his views must have been affected by his unique position. He, of all men, must have seen in royal prerogative, an instrument, and the only effective instrument, for religious reformation. He, of all men, must have been convinced by the attitude of the House of Commons on Church questions, of its unfitness to control government. His position and his aims disabled him from ever doubting that power to direct public policy should lie with the King.

But in no sense was Laud a systematic thinker on politics. He gave no thought to the State in general: he seems hardly to have conceived of the State apart from the Church. Nor does he seem to have given any serious thought to constitutional questions. The legal aspects of the controversy did not interest him. His political views found expression only in the most fragmentary manner. It has frequently been supposed that he was a believer in absolute monarchy and hoped, and worked, to see it established in England. But I see no sign in his writings of such a belief or hope. 'I was never such a fool', he said, 'as to embrace arbitrary government.'[2] So far as his personal action goes he seems always to have desired to keep within what he regarded as law.

The King, he says, is God's 'immediate vicegerent'. Such phrases, hackneyed and conventional, implied little. 'God and

[1] Letter of September 9th 1633. *Works*, in Library of A.C. Theology, Oxford, 1847, etc., VI, Pt. I, pp. 310–11.

[2] *History of Troubles and Trial*. *Works*, III, p. 258.

the King stand very near together.'[1] It is wrong, he declared, even to grumble over imperfections in the King's management of affairs; 'for the secret lets and difficulties in public proceedings . . . are both innumerable and inevitable'.[2] People who criticize the government so as to impair its prestige 'are dangerous and unworthy members of any commonwealth'.[3] 'The King's power', Laud declared, 'that is from God.' It was a commonplace of the divinity schools. 'All judges and courts of justice', he continued, 'even this great congregation, this great council . . . receive influence and power from the King.'[4] The Houses, he suggested later, have no right to talk about fundamental laws unless they are prepared to explain what these are and where they are to be found. The common law of England, he argued, knows nothing of them and there is no text to show what they are.[5]

The Canons of 1640, to which Laud referred approvingly at his trial, may fairly be taken as expressing his views, so far as they express anything. 'The most high and sacred order of Kings', it is there laid down, 'is of divine right, being the ordinance of God himself, founded on the prime laws of nature and clearly established by express texts' of Scripture. The conventional phrases thus jumbled together had been repeated so often that they would seem to have ceased to mean anything. If they express Laud's view, that indicates clearly how vague his views were. The most definite assertion that was made in these Canons was that for any one to maintain that 'any independent coactive power either papal or popular', exists along with the King's is 'to overthrow that most sacred ordinance'. But it is hard to give even to that assertion any relevant meaning. No one had, as yet, claimed for the Houses of Parliament 'coactive' or executive power.

All these broken fragments of speech hardly even suggest any definite or considered view either of the State in general or of the English constitution in particular. Yet little can be found in Laud's writings that is more explicit. His conception

[1] *Seven Sermons.* Sermon IV preached at the opening of Parliament 1625. *Works*, I, p. 94. These seven sermons which are all that remain of Laud's, were first published together in 1651. Six of them had been published separately soon after delivery.

[2] *Sermon II*, 1622. *Works*, I, p. 44. Hooker had said much the same thing.

[3] *Sermon IV. Works*, I, p. 107.

[4] Ibid., p. 100.

[5] *History of Troubles. Works*, III, p. 399.

of the constitution and of the position of the King was substantially, I think, that of Francis Bacon. Bacon had seen in the dominating directive power of the Crown the only effective instrument of good government: Laud saw it as the only possible instrument for the religious reformation he desired. Both were prepared, therefore, to support the King's claim to direct public policy in face of Parliamentary opposition. Both were ready to support his claim to override law on occasion. Laud, certainly, agreed with Sanderson that mere law is no adequate measure of a subject's duty. We know that he practically approved of the utterances of Manwaring and Sibthorpe. His view of the question of ship-money would, I think, have been precisely that of Berkeley's judgement. He would certainly have said that if the King, pleading urgent need, demanded money, a good subject would not refuse to pay on the shallow ground that the demand was illegal; in fact he did say, practically, that very thing. 'If an absolute necessity do happen', he wrote, 'by invasion or otherwise, which gives no time for counsel or law, such a necessity (but no pretended one) is above all law.' But this very passage implies clearly that normally the King cannot rightfully demand money except by way of Parliament. I see no sign whatever that Laud would have claimed for the King power either to tax or to make law at his discretion. So far as he conceived of kingly absolutism at all, he seems to have disliked it, as any man of the High Church party was, I think, likely to do.

That in the constitutional conflict of the time Laud, like Bacon, was on the King's side, is of course quite clear. So equally, and in the same sense and degree, were probably a very large majority of those who made up the High Church party. But none, or, if any, certainly very few of them, were believers in royal absolutism. There is in fact nothing peculiar or in the least unusual about Laud's idea of the constitution. What was really distinctive and to some extent original in his political thought was his conception of the need of intimate union between Church and State. What he constantly and with emphasis insisted on was the necessity for every well-ordered State of the closest co-operation with the Church.

Church and commonwealth, he declared, 'are so near allied that the Church can never subsist but in the other . . . so

near that the same men which in a temporal aspect make the Commonwealth, do in a spiritual make the Church'. He might have quoted Hooker; but there was that in his mind which was not in Hooker's. 'The Commonwealth can have no blessed and happy being', he goes on, 'but by the Church.'[1] No man can serve God or the King or the Church well but he serves all three.[2] Without the backing of the Church the State cannot stand firm. Law is not practically binding unless conscience bids us obey. You cannot secure obedience by penalties 'and no school can teach conscience but the Church of Christ'.[3] 'Therefore when you sit down to consult you must not forget the Church, and when we kneel down to pray, we must not forget the State.'[4]

The phrases quoted express, though very insufficiently, Laud's deepest conviction about the State. It is unfortunate that he never gave his conception anything like complete expression. He had a vision of a State that was a Church and of a Church that was a State; and it was to realize that vision that he laboured. It was a vision that, in one form or another, had haunted many minds in the sixteenth century.

In the England of Charles I it was, perhaps, the Presbyterian rather than the High Church party that was dominated by this ideal. But for Laud himself, at least, it was paramount. So arose, in his conception, the necessity for unity and peace, order and authority in the Church. 'Doctrine and discipline are the walls and towers of it', he said; but they are not enough. There must be peace within the walls. 'Both Church and State then happy, and never till then, when they are both at unity in themselves and one with another.'[5] Once unity in religion breaks down, all religion is in danger.[6] Schisms and divisions in the Church 'are both mothers and nurses of all disobedience and disjointing' in the State.[7] Schism is indeed a kind of sedition. 'A sedition, or a schism, in a corner, in a conventicle . . . will fire all if it be suffered. For the State none doubts it, and it is as true of the Church.'[8]

If peace and order are to be maintained in the Church,

[1] *Sermon I*, 1621. *Works*, I, p. 6.
[2] *Sermon IV*, 1625. *Works*, I, p. 94.
[3] Ibid., p. 114.
[4] *Sermon I*. *Works*, I, p. 6.
[5] *Sermon III*. Preached at the opening of Parliament, 1626. *Works*, I, p. 70.
[6] *Sermon VI*, 1628. Preached at the opening of Parliament. *Works*, I, p. 157.
[7] Ibid., p. 158. Eliot, in 1625, was saying the same thing.
[8] *Sermon I*, 1621. *Works*, I., p. 13.

authority must be recognized and law must be obeyed. Episcopacy is the form of Church government established by law in England, as originally established by Christ himself. Writing to Joseph Hall in 1639, Laud insisted that the spiritual authority of bishops is of divine right in the fullest sense. 'My order, my calling, my jurisdiction *in foro conscientiae*, that is from God', he declared.[1] 'Never was there any Church yet', he wrote to Hall, 'where it hath not obtained.'[2] He fully admitted, of course, that the bishop's divine calling did not entitle him to exercise any coercive authority. That could only be derived from law and the King. 'Though our office', he said, 'be from God and Christ immediately, yet may we not exercise that power, either of order or jurisdiction . . . in any Christian king's kingdom but by and under the power of the king.'[3] He was only saying what was said by all the episcopalian divines of the time.

But the main question that had been raised under James I was whether power to define and determine doctrine and ritual lay essentially with the clergy or with Parliament. On that strictly practical and constitutional question Laud's language is confused and ambiguous. 'The determining power for the truth and falsehood of the doctrine, heresy or no heresy,' he says, 'is in the Church.'[4] Who, then, or what is it that represents and speaks for the Church? Carleton had declared that Church and State are fundamentally distinct. Laud, in describing the union of Church and State, used almost the phrases of Hooker. But, clearly he did not accept Hooker's conclusion. Hooker had argued that if 'with us one society is both Church and commonwealth' it follows necessarily that 'to define of our Church's regiment, the Parliament of England hath competent authority'.[5] Laud admitted that 'the King and his High Court of Parliament may make any law what they please', and 'by their absolute power' might legally disestablish

[1] *History of Troubles*. *Works*, IV, p. 196.

[2] Letter of November 1639. In *Works*, VI, pt. 2. Hall had sent to Laud the first draft of his *Episcopacie by Divine Right* and Laud replied with criticisms and suggestions. Hall's book was published in 1640 and may be taken as representing Laud's views.

[3] *Speech in Star Chamber against Bastwick, Burton and Prynne*, published 1637. *Works*, VI, p. 43.

[4] *History of Troubles*. *Works*, IV, p. 352.

[5] *Ecclesiastical Polity*, VIII, I, p. 330 and VIII, 6, p. 411.

Christianity and establish Mohammedanism.[1] Yet he declared roundly that Parliament 'cannot determine the truth of doctrine without the assent of the Church in Convocation'.[2] Parliament, that is, can make it punishable to deny this or that; but it can do no more. No one is morally bound to accept its determinations.

But why, if the very same people who in one aspect form the commonwealth, in another are the Church, should the determinations of Parliament, which speaks for them all, need the assent of Convocation? Laud might, it is true, have denied, as many did later, that Parliament really represented the nation; but it is highly improbable that he would have done so. In Laud's view the assent of the Church cannot be given by Parliament; it can be given only by Convocation, that is, by a body representative of the clergy only. If Laud held, with Field and Carleton, that power to determine doctrine and ritual properly belongs to the clergy and that Convocation, with the King's assent, can make positive law on those matters, why did he not say so? He made, so far as I know, no explicit declaration to that important effect.

It seems that the union of Church and State, which to Hooker was a fact, was to Laud an ideal only. He was too conscious of a mass of opposition and dissent to see the nation as actually a Church. Hooker had found union in the general belief in what he calls 'the very essence of Christianity'. Laud's thought demanded something less wide and more definite. To him it seemed quite obvious that the House of Commons did not represent the Church. It may seem strange that the actual head of the High Church party should have given forth uncertain sounds on this crucial question. Carleton and Field had been explicit on this subject, but their position was very different. It was, I imagine, just Laud's unique position that confused his utterance. The man in an office is conscious of pressures, strains and obstructions that hinder or condition action, which for the man in the study simply do not exist. He shrinks from the assertion of principles to which he knows that it may be impossible strictly to adhere. Unless he is possessed of unusual power of clear thinking, his thought is likely to become incoherent. Laud knew quite well what he

[1] *History of Troubles. Works*, IV, p. 352. [2] Ibid. *Works*, IV, p. 352.

wanted, but his thought on the essential question seems to have been confused.

Yet it can hardly be doubted that on this matter Laud agreed fully with Carleton. His indubitable approval of the proceedings of the Convocation of 1640 seems decisive. It was declared that the Canons of that year were invalid, if only because they had been passed when Parliament was not sitting. The prolongation of the sessions of Convocation after the dissolution of Parliament, was asserted to be without precedent and illegal. But it was not really a question of precedents. If Convocation, acting with the King, could make law for the Church without reference to Parliament, there was evidently no good reason why it should not sit independently. Laud's approval of all that was done removes any doubt as to what his opinion was.

If unity is to be maintained within the Church, then, in Laud's view, not only must law be obeyed but preaching must be controlled. A silence, he thought, was needed about insoluble problems, public discussion of which could lead to nothing but divisions.[1] 'If every man may preach as he list . . . the world will soon have as many differences in religion, as there be young, ignorant and bold priests in parishes.'[2] It has been truly said that Laud's 'conception of the function of the Church caused him to dislike all preaching which did not take place under its supervision and authority'.[3] To the Calvinist the main function of the ministry was preaching: to Laud it was the conduct of worship and the administration of sacraments. It is clear, too, that Laud could not afford to allow preachers to attack the constitution and law of the Church, or its forms of service or to represent abstruse Calvinistic doctrine as distinctive of the Church of England. He could, at least, no more allow such preaching than the House of Commons could allow Manwaring to preach the probable damnation of those who refused to pay the forced loan. Hence came his measures against Puritan 'lecturers' and hence too, his efforts to suppress Puritan writings.

Laud, as has been said, knew well what he wanted. It was clearly not enough to suppress hostile preaching and force

[1] See *Sermon III*, 1626. *Works*, I, p. 72 et seq. [2] Ibid., p. 75.
[3] G. B. Tatham, *The Puritans in Power*, 1913, p. 17.

obedience to law upon the clergy. In Laud's conception unity within the walls of the Church involved a definite degree of uniformity in the conduct of public worship throughout the kingdom. His own statements are the best evidence we possess as to what, in general, he aimed at thus obtaining. 'All that I have laboured for in this particular,' he says, 'was that the external worship of God . . . might be kept up in uniformity and decency and in some beauty of holiness. . . . I found that with the contempt of the outward service of God, the inward fell away apace.' He adds that he found many conscientious persons wavering in allegiance to the Church because they saw 'the churches themselves and all things in them suffered to lie in such a base and slovenly fashion in most places of the kingdom'.[1] 'Unity', he said at his trial, 'cannot long continue in the Church where uniformity is shut out at the church door. . . . The true and inward worship of God . . . needs external helps, and all little enough to keep it any vigour.'[2]

Whether he were wrong, practically, about this, is hardly a matter for discussion here. But it may be pointed out that the fact that there are people for whom such external helps are useless, or even a hindrance, does not mean that he was wrong. On the whole, the experience of humanity seems to suggest that he was right. Nor is there, so far as I see, any ground for suggesting that a religion that needs external helps to inward worship must needs be a formal or a superficial thing. Laud, it has been well said, 'sought to influence men by the formation of habit. Uniformity . . . was the means to be pursued to make men good Christians.'[3] In law the Church was national and all-inclusive; it was Laud's task to change the legal fiction into a reality. In attempting to do so he relied on habit and, as Wakeman's remark implies, also on suggestion.

The records of the great metropolitical visitation of the years from 1633 to 1636, which was the essential feature of Laud's administration, supply the details of his ritual requirements. Compared either with the language used about them at the time, or with subsequent and much later ritualistic developments, they appear singularly moderate. Laud insisted, above all, on the railing off of the communion table at the east end

[1] *History of Troubles*, ch. VII. *Works*, III, pp. 407–8.
[2] Ibid. *Works*, IV, p. 60.
[3] Wakeman, *The Church and the Puritans*, p. 107.

of the chancel. He insisted on the use of the surplice and on strict adherence to the Prayer Book and its directions. He endeavoured to secure provision of stone fonts and 'comely' pulpits in all churches.[1] He insisted, so far as he was able, on bowing in church at the name of Jesus; and this imprudence on his part aroused great resentment. It has often been pointed out that his requirements for the most part represent a minimum of what has come to be regarded as only decent and appropriate.

It may seem strange that demands so apparently moderate should have been denouced as Popish or as intended to prepare the way for Popery. But Laud aimed at bringing about a universality of habit and achieving a uniformity of suggestion; and it was to the suggestions of his arrangements that Calvinists objected. The eastward position of the communion table did not express any particular theory of the sacrament; but, by association, it did suggest that something mysterious happened at consecration. It certainly suggested that the rite was not merely commemorative. It suggested a Real Presence in some undefined sense. That was probably intended; and certainly it was so understood both by those who approved and those who disapproved.

The eastward position made, also, for that habit of formal reverence which, Laud believed, tended to produce real reverence. Placed in the body of the chancel, the communion table was liable to be used, by the irreligious or the fanatical, as a hat stand or, even, to be sat upon. Among these would be some called Puritans, though one cannot imagine Baxter behaving so. To make the table safe from such outrages it had to be railed off. But the altar rails, declared by the Canons of 1640 to be only for protection, suggested to many a change of the minister into a priest of the old dispensation, isolated in a sanctuary forbidden to the laity. This it was that aroused the fierce wrath and ready scorn of Milton.

The use of the cross in baptism, again, did not express any particular theory; but it did suggest a mystery. It suggested, at least, that baptism was not a mere form, and, like the surplice, it was objected to as having been 'abused to idolatry'. But

[1] Some at least of the beautiful pulpits of the period that still remain in our churches may be put to the credit of his influence.

its use had been ordered by the Canons of 1604 and, whatever Laud may have thought about it, he could hardly go behind them. So also it was with the surplice. There might be a doubt in law about the sign of the cross; there was no doubt that law enjoined the use of the surplice. Here at least Laud was only enforcing the law of the land.

'As for ceremonies,' declared the Archbishop, 'all that I enjoined were according to the law.'[1] The declaration no doubt represents the truth as he saw it; but its accuracy is rendered dubious by the uncertainty that still existed, in some respects, as to what the law was. The removal of the communion table to the eastward position is a case much in point. 'The holy table, in every church,' Elizabeth had ordered, 'shall be . . . set in the place where the altar stood.'[2] 'These words of the Injunction', Laud pointed out, 'are so plain as that they admit of no shift.'[3] But were the Injunctions of 1559 still law in 1633? In a letter of 1629 Laud admitted that not all lawyers held that they were.[4]

It is clear, however, that to a considerable extent Laud was engaged in enforcing the law which it was his official duty to enforce. It must be pointed out also that, whatever the legal aspects of some of his requirements, none of them were, strictly speaking, innovations. They were rather revivals. But it was of little use to tell men who had always been accustomed, in their own parish, like their fathers before them, to see the communion table in the middle of the chancel, that its removal eastward was not an innovation. And if you told them that the removal was obligatory under a law of 1559, they were likely to be incredulous and certain to be irritated.

Laud was, and even is, denounced as a persecutor and spoken of as though his life exhibited a peculiarly narrow intolerance. Actually, his mental attitude seems to have been more tolerant than that of most of the religious men of his time. As the law stood attendance at unauthorized forms of worship was penal and attendance at church was obligatory. Consequently, any attempt to obtain even the most moderate amount of uniformity in public worship, or even any attempt to enforce recognized ecclesiastical law, involved, necessarily, oppression for those

[1] *History of Troubles. Works*, III, p. 407.
[2] Injunctions of 1559.
[3] Speech in the Star Chamber, 1637.
[4] *Works*, VII, p. 28.

who dissented. Laud, of course, completely accepted the system and all that it involved, and without any misgiving. He had constantly before him an ideal of national unity in religion which seemed to make such a system necessary. The system his Calvinist enemies would have substituted was in these essentials the same as his, only more rigid. Law was intolerant, the House of Commons was intolerant, the Presbyterians were most intolerant of all. Laud's uniformity in worship meant far less than what the Presbyterians hoped for. On all doctrinal questions much disputed upon and recognized as obscure and difficult, Laud seems to have been ready to allow of a large freedom of opinion. His tolerance of intellectual differences is illustrated in his dealings with Hales and with Chillingworth and appears, perhaps still more strikingly, in his relations with Catholics, in spite of his really intense dislike of what was distinctively Roman.[1] This, of course, did him much harm and does him much credit. He tried to prevent the handling of highly controverted theological questions before ordinary congregations, because he saw possible harm, and no possible good, resulting from such preaching. He would have in any case disliked preaching which dealt habitually with theories of grace, election and the freedom or the slavery of the will. That does not imply that he was not prepared to tolerate Calvinistic opinion on these subjects. But Calvinist preachers seem habitually to have asserted or implied that their particular theories were alone tolerable in a Protestant Church and habitually to have denounced those who did not agree with them. I see no reason to suppose that, had it not been so, Laud would have endeavoured to suppress reasonable expression of their views.

Laud was, in fact, making the supremely important admission that on such questions no demonstration was possible and therefore no communicable certainty attainable. He was not, of course, prepared to admit that the maintenance of true religion by law was in no degree possible. On the contrary, he had no doubt that it was possible, and that, therefore, it must be done. But he was, at least, implicitly admitting that on the great vexed questions there was no such certainty attainable

[1] 'It is not your change that can change me', he wrote to Sir Kenelm Digby, when that eccentric personage announced, in 1636, his reconversion to Rome. The whole letter is typical of his attitude. See *Works*, VI, pt. 2. p. 454.

as would justify the penalizing of any particular opinion. That admission was a first necessary step in the direction of legal religious toleration. Until that admission was made all argument in favour of toleration necessarily seemed inconclusive. Laud, it seems, would have agreed with Castellion that it was vain to dispute concerning free will or predestination or the Trinity, since knowledge on these matters, even if attained, would make men no better than before.[1] To the English Calvinist, as to Béza, such an attitude was impious and blasphemous.

It is of course true, on the other hand, that Laud showed an utter lack of sympathy with his Calvinistic opponents. That he at times dealt harshly with them is, indeed, not surprising when we consider the nature of the attacks made upon him and the bishops who worked with him. It must have been difficult for him to respect men who believed, or pretended to believe, that he was secretly a Romanist and aimed at Romanizing England. It is hard to understand how any one who had read his *Conference* with Fisher[2] could honestly have held a belief so absurd. It must have been very difficult to feel any respect for men who raved like Leighton, slandered like Bastwick, or talked venomous nonsense like Prynne. These men must have seemed to him unscrupulous liars and slanderers, full of hatred, malice and all uncharitableness.

It is true that the writings of these fanatics could not fairly be taken as representing the ideas of any party or even of men quite sane. Yet their outrageous language was only an exaggeration of much that was soberly said. In *News from Ipswich*[3] Prynne accused the bishops of hating religion, and seeking to murder souls and get men to serve and honour the Pope and the Devil. He recommended the gallows as the proper place for them. He even had the impudence to assert that the words of Article 20, 'The Church hath power to decree rites or ceremonies and authority in Controversies of Faith' were a forgery inserted in the Prayer Book in 1628. The punishments inflicted on these men were brutal and

[1] Lesquelles choses aussi, encore qu'elles fussent entendues, ne rendent point l'homme meilleur,' etc. *Traité des Hérétiques*, 1554, ed. 1913, p. 13.

[2] Published 1622 and again in 1639.

[3] Prynne's *News from Ipswich* was published in 1636 and republished in 1641. Henry Burton's *For God and the King* appeared in 1636 and Bastwick's *Litany* in 1637.

excessive and Laud seems to have approved them, though there is nothing to show that he was primarily responsible. But it is probably true, as he pointed out, that under Elizabeth they would have been hanged like Penry.

It remains true that Laud apparently altogether failed to recognize the sincerity or to understand the depth of the feeling that lay behind much, at least, of the opposition to him. In spite of his tolerance of intellectual differences, it seems never to have occurred to him that to try to force particular modes of worship on people convinced that such worship was offensive to God, might reasonably be regarded as unjust and tyrannical. He could, it seems, see no excuse for refusal to accept what he regarded as determinations of the Church. In that respect he was as intolerant as any of his enemies. He was not, when all is said, a great man: he had too little imagination to be called that. But he was an honest, unselfish idealist, overworked and overstrained, and his final condemnation was one of the worst recorded cases of judicial murder. It was, indeed, hardly judicial. The indictment was a farrago of absurdities and propaganda, and the prosecution was conducted by Prynne with the unscrupulous rascality of fanaticism.

'Thus Laud fell', wrote Heylyn, 'and the Church fell with him.' But it is easy to kill a man, and if that is all you do you do nothing to the purpose. The work of Laud and of Bancroft was for a time swept away; but the triumph of that incoherent thing called Puritanism was very short-lived. It was something at least very like the Laudian Church that was restored at the Restoration. It was he rather than the Puritans who triumphed. Not only was his Church restored, but its restoration left only a minute percentage of Nonconformists. Evidently his constructive work had not been wholly a failure. The Church of England has, it may fairly be said, remained ever since, substantially, though at times somnolently, the Church of his conception. It has retained a comprehensive latitude of doctrinal belief and speculation which he, at least, did nothing to destroy. It has to a great extent practically accepted his ritual requirements.

Yet Laud's success was at best only very partial, and it is surely fortunate that it was so. The conception of the Church which he represented, in no degree specifically his own, has

survived to this day. But had he achieved all he dreamed of achieving, we should have had something very different even from the Church of the Restoration. His ideal involved a union between Church and State so close that it could not but prove oppressive and obstructive. It would have involved not merely the suppression of all dissenting forms of worship, but would have established the clergy as authoritative censors of morals and of religious belief. Had it been realized there might, in time, have been little to choose between his Convocation and the Presbyterian General Assembly.

Success and failure are so near akin that it is hard to tell one from the other. What we call success in relation to the government or the structure of society can never be anything but very partial. It is measured by time and bounded by place. The larger the enterprise the greater the success, and the more sure the failure in the long run. King Lear or the Trojan Women may survive innumerable revolutions, collapses, and reconstructions, but no mere statesman or reformer can hope for such success. That Laud failed to realize his ideal need not affect our estimate of its value. But it may surely be said that, had it been realized, progress would have been stayed. Laud, it seems, aimed at stereotyping and standardizing religion. He failed, as all such efforts must fail if progress is to continue.

PART III

APPROACHES TO TOLERATION

Chapter I

TOLERATION AND TOLERANCE

At no period in the history of England was there so much controversy on what is known as the question of religious toleration as in the seventeenth century. Should the government of a State, either as a matter of duty to God and to its subjects, or as a thing permanently expedient, endeavour by law and by force to maintain national unity in true religion? Or should all men, so far as may be consistent with public peace, be left free to find and to follow each his own religion? Or should some middle course be adopted; and, if so, where should the line be drawn? On this complicated question, already raised many times and long before, there began in 1644 a vigorous controversy which continued without a break to 1649. Many very different views were expressed and many writers on either side stated a case with remarkable force and ability. After 1649 the controversy for a time died down; but it was still continued after the Restoration.

Before the end of the century a certain measure of legal toleration of religious dissent had actually been achieved. But its establishment was only to a small, perhaps to a trivial, extent due to thought and controversy on the general question. All the argumentation about the duty of the State and the rights of the individual had failed to produce anything like general agreement. Discussion of the question whether national union in religion can possibly be attained or whether, in any case, it is worth the cost, had equally failed to produce any generally accepted conclusion. It is doubtful whether any one on either side of the controversy was ever convinced by the arguments on the other side. Quite certainly the practical outcome was not due to any superiority in the argument for toleration. Faulty argument is as likely as the soundest to be effective with the half-convinced, or with those who wish to be convinced. No argument is likely to convince others; if only because every argument needs assumptions before it can become convincing.

Reflection and controversy might, conceivably, under conditions that did not exist, have established some principle, general acceptance of which would have made legal toleration a matter of course. But actually no such thing happened. Can it, indeed, be said that there is any such thing as 'the principle of toleration'? There are several principles on which legal toleration might logically be based; and they are not only different, but possibly inconsistent one with another. What is meant, in journalistic phrase, by the principle of toleration, appears to be the notion that toleration of all religions is practically beneficial to society. If that proposition refers only to a given society it cannot be called a principle. If it refer to all societies in all circumstances it may, in a sense, be true; but proof is difficult. Conditions may be such as to render such toleration simply impossible.

In the main the early establishment of a partial toleration in England, as elsewhere, seems to have been due to perceptions of immediate expediency or lines of least resistance. It was a matter not of action upon principle, but of circumstantial pressures. In England it was, at least partially, due to the exigencies of party politics. Its later complete establishment seems to have been, to a considerable extent, the result of a growing indifference: indifference, that is, to all forms of positive religious belief or worship. Such indifference was a factor also in the seventeenth century. There are, of course, many kinds of it. It may be merely frivolous; or it may be the attitude of a man whose curiosity and imagination has been choked by the tares of the world; of a man absorbed in pushing his way or in a mere struggle for daily bread. It may be due to habitual lack of reflection or simply to laziness. It may be quite unintelligent, and it may be very intelligent. It may arise from a, perhaps only half-conscious, scepticism concerning all religious beliefs. But, whatever exactly it is, there will be along with it, a large measure of indifference as to whether this or that sect is tolerated. Freedom to worship in one's own way is likely to be a matter of indifference to one who has no desire to worship in any way or who worships only in a fashion of which law can take no cognizance.

The phrase religious toleration has come to be commonly used in a sense almost technical. In the fullest sense it means

that law imposes no penalties, disabilities or restrictions on the expression by word or act of religious opinions; that men are legally free to follow their own religion so long as they do not trespass on the legal rights of their neighbours. That consummation was far from having been reached at the end of the seventeenth century. Yet a battle had been won, and the subsequent consolidation of Whig supremacy made the win decisive.

Historians have seen in the fact a mark of progress: yet it seems worth while here to consider in what sense and degree it may be so understood. Compromise between parties that have fought each other to a deadlock is certainly no sign of progress. Nor can the unwilling conviction that the attempt to attain national unity in religion costs too much, in friction, misery, and demoralization, or even in money, be reckoned as any real advance.

Certainly the establishment of legal toleration in respect of religion is of positive advantage to a society. Something, at least, is gained by getting rid of a cause of chronic friction and of needless human suffering, even though the price paid be thought of as heavy. But essentially what is gained is a release of thought, and only so far as that is effected does the whole community profit. Thought, it may be said, is always free and cannot be restrained; and literally, at any one moment, that is true. Yet it is not doubtful that a system of restriction or persecution in relation to religion, tends to the actual suppression of thought. It involves suppression of that desire to express oneself which is so general that people speak of it as instinctive. It involves repression of that desire for public service which society needs to encourage. It involves, also, the repression of that stimulus to thought which comes from criticism and the clash of opinion. It involves the cutting off of the assistance given to any thinker by the work of others. The inquirer is isolated, to his great loss. Under such conditions the activity of thought will surely languish, if it do not cease.

Yet merely to free strictly religious thought and its expressions goes but a little way. If, indeed, that freedom be made complete there is a great release and a great gain. But complete freedom must mean not merely the toleration of Christian forms of thought but equally of those that are non-Christian or anti-Christian. There is no line that can logically be drawn. If

you say that men are free to draw their own conclusions from study of the Scriptures, you cannot rationally complain if their study leads them to a conclusion that the authority of the Scriptures is a delusion. It was just the perception that the first step once taken, the rest would follow, that made many well-meaning and highly intelligent people in the seventeenth century oppose any measure of toleration.

It must be remembered, too, that a release given merely by law is likely to be very incomplete. So long as toleration is thought of merely as a matter of political expediency, as a concession to troublesome people for the sake of peace, so long will it be very partial. For many minds mere social pressure may be as effectively oppressive as the more terrifying methods of the law.

We have made, it seems to me, a great deal too much of legal and governmental toleration. In connexion with religion the very word 'toleration' might be taken as an insult. It suggests official arrogance or the stupid dogmatism of a majority. What is needed for complete and assured freedom of speculation, question, inquiry and criticism, is not so much legal toleration as a mental outlook respectful of all opinion on every subject of thought.[1] To be tolerant merely of other people's religious opinions is, in any case, little. If it be the result of indifference it is worth nothing at all. What is needed is tolerance of adverse opinion on those questions in which we ourselves are strongly, it may be passionately, interested. Such tolerance is the only solid foundation for religious or any other liberty, and the only guarantee of its continuance. On the predominance in society of tolerance in this sense, intellectual liberty and, therefore, in the long run, progress itself, can alone rest secure.

It is not the mere development of legal toleration that of itself constitutes progress, but the development of that rational tolerance among men that makes legal toleration a matter of course. If religious toleration exists, as it may exist, without such tolerance, no great advance has been made. A society may, for many reasons, have ceased to concern itself with men's religious opinions. But if, in that society, political controversies, for instance, be still associated with hatred and

[1] Demonstrably absurd opinions, such as the opinion that the earth is flat, like a tabletop, may be excepted. But such opinions certainly need no forcible suppression.

contempt and violence, the essential would seem to be still lacking. If it be conducted with such irrelevancies as confiscations and banishments, bombs and guns, that society would appear to have made no advance beyond the point where similar methods were used in connexion with religious controversy. For the claim to suppress adverse opinion and criticism is the same in one case as in the other.

I am not here concerned with the extremely complex process by which a toleration of dissenting sects was established in the seventeenth century. I have to deal with thought concerning the question of how far opinion should, and in what cases it should not, be 'tolerated'. In the seventeenth century that question hardly arose except in connexion with religion. The House of Commons showed indeed, in the case of Strafford, a strong, if confused, inclination practically to treat certain forms of political opinion as criminal. It is true, also, that the later treatment of 'malignancy' came at times near to a proscription of certain political views. But there was never any question of formally penalizing political opinions as such. All the controversy turned on the question of how far religious opinion, officially unorthodox, should or should not be tolerated. Necessarily that included a question as to the toleration of opinion regarded as irreligious or blasphemous. But it was on the ground of religion that the battle for intellectual freedom was, at that time, fought.

What must above all be traced in the controversies of the seventeenth century, if any advance is to be found there, is an increase of rational tolerance in relation to adverse opinion. Some signs of such an increase may certainly be found. But at all times there have been individuals who, by temperament or conviction, have been tolerant. How far was there any real advance? We are nowadays inclined to think that we are more tolerant than our ancestors. But it is a question whether the natural intolerance of man, pointed out by Acontius in the sixteenth century, has yet sensibly diminished. The existing state of things in Europe suggests that we have deluded ourselves.

Chapter II

OBSTACLES

THE theory of royal supremacy in affairs ecclesiastical, as officially interpreted under Elizabeth, logically implied that the secular soverign was under no obligation to suppress forms of religion merely as false. It was implied that the sovereign could determine for himself what was tolerable and what intolerable. It could hardly be maintained that either Parliament or the monarch was infallible. It might, indeed, be held that all vexed questions of religion could be infallibly and demonstratively answered from the text of Scripture. But, looking even to England alone, deepening divisions of opinion made it more and more difficult to believe that it was so. And unless it were so the government could not rationally undertake to suppress any form of religion except for purposes strictly temporal. Certainly no government of thoroughly 'Erastian' views was at all likely to concern itself with any considerations but those of immediate expediency. James I might declare that it was the bounden duty of every Christian King to extirpate heresy in his dominions, and his opinion might, for the moment, be of some practical importance. None the less was it merely a declaration of his personal opinion. And in any case there remained the question: what is heresy?

There existed, however, a serious intellectual difficulty in the way of acceptance of the view that government should suppress expressions of religious opinion only on grounds of social or political expediency. If true religion were in any degree ascertainable with certainty, how could it but be the duty of the sovereign to maintain it as far as possible and, if necessary, by force? If, especially, men's prospects in the world to come depended in any serious degree on their beliefs and modes of worship in this world, how could it be maintained that the government should allow of the free propagation of doctrines or practices that might lead to damnation? It had, long ago, been argued that persecution necessarily failed; that by it dissent and heresy were positively stimulated. But no

satisfactory proof of that assertion could be given. Men tend to believe what it seems their interest to believe. Even though persecution might, as was frequently said, directly produce nothing but hypocrisy, the children or the grandchildren of those hypocrites are quite likely to be found walking with conviction on the safe high road. Actual extirpation of dissenters might well be practically impossible, but that fact did not really matter. There was ground for believing that by the action of government dissent from orthodoxy could be reduced to, and kept at, a safe minimum.

Before any argument for legal religious toleration could seem conclusive certain recognitions were necessary. It had to be recognized that men, differing as widely as men do, could not reasonably be expected to reach the same conclusions. That involved an admission that the truth could never be demonstrated so absolutely that all who understood the demonstration must be thereby convinced. But people whose religious convictions were intense would make that admission reluctantly, if at all. Equally necessary was it to recognize that Castellion had been right in asserting that no more was required of any man than that he should seek truth and live according to his light. That recognition involved that right belief was no part of virtue, that no one would suffer for honestly believing wrongly; that, in fact, it mattered little in the long run what a man believed, so long as his belief was sincere and his life accorded with it.

All that was needed, it might here be said, was recognition of the obvious. But that is an illusion. These things may seem obvious to one who has acquired the habit of thinking of religious beliefs as merely personal opinions, indemonstrable and largely incommunicable. But if you think of religious belief as dependent on the accurate interpretation of the words of Scripture or on the findings of councils and synods, or the determinations of any kind of authority, the case is quite altered. Then not only will these things not be obvious, but they will be hard to recognize. What I wish to insist upon is that no argument for toleration not based on these recognitions should have convinced any one. Conversely, unless the necessary admissions were made on the other side no argument could seem conclusive. That, perhaps, is as much as to say that

argument on the question was usually as futile as argument usually is. What the advocate of toleration had to do was to induce his opponent to make the necessary admissions.

There were, of course, other obstacles to any acceptance of the view that the practice and propagation of more than one form of religion should be tolerated. There was the fear that the development of antagonistic religious bodies within the kingdom might lead to internal strife and so to weakness in face of foreign enemies. That fear was strong in Charles I's House of Commons. On the other hand, it was visibly true that an effort to maintain national unity in religion might also lead to serious internal disorders. Of that possible result England had had as yet no actual experience; but the experience of France might have been a warning.

There was fear, also, that freedom in religion might result in a moral disintegration and the disappearance of any common standard of conduct. There was fear that there might be many who would be ready to respond to the toast given by my Lord Rake in the play: 'Confusion to all order! Here's liberty of conscience!' That fear had been felt and expressed under Elizabeth and, after 1640, was to be felt more acutely than ever. Nor can it be said that such fear was altogether unreasonable.

Had these obstacles been all, the road to what is called religious toleration would, however, have been a far easier road than actually it was. Within a few years of Elizabeth's death that road was already more blocked than it had been. Her settlement of the Church had been doctrinally indefinite and in practice chaotic. It had practically been a step in the direction of toleration. By introducing a higher degree of definition into the law of the Church and a stricter enforcement of conformity, James and Bancroft had to some degree reversed that step. Then, too, alongside of the Calvinist Presbyterian ideal, which already blocked the way, there developed a rival idealism, wider in view, but equally incompatible with a toleration of nonconformity to official religion. The ideal that Laud represented was a new barrier. The High Churchmen of the new school seem, indeed, to have made, at least partially, some of the admissions on which a theory of toleration could be solidly based. Nevertheless, relatively tolerant as in

some ways was their attitude, their ideal involved absolutely the conception of a national Church that was all-inclusive. Still more serious, perhaps, was their repudiation of Elizabethan Erastianism. If Convocation alone could speak for the Church and the King were normally bound to give the force of law to its decrees, it was likely to be no longer possible to grant toleration on mere grounds of expediency.

Pleas for toleration under James I came only from persecuted groups. The fact that a persecuted sect pleads for toleration for itself is no evidence either of any development of an attitude of tolerance, or of that of any principle of toleration. It might be imagined that if all dissenting groups, while pleading each for itself only, produced convincing reasons the logical result would be a general toleration. But that hypothesis is altogether fallacious. Far from being able to give convincing reasons, no group, pleading for itself alone, could produce any reason at all why it should be tolerated, unless on grounds of mere expediency or grounds merely sentimental. A government might of course be convinced that it was inexpedient, or dangerous, to attempt suppression. But no principle would then be involved. A toleration founded only on expediency is founded only on the shifting sands of circumstance. So, also, argument for the toleration of some one type of religion coupled with a demand, expressed or implied, for the suppression of all others, had, of itself, no value whatever. However such a plea be put, it involves either self-contradiction or an assumption that cannot be justified. It does not in any way really weaken the case against toleration. It is not, in fact, an argument for toleration: it implies, and indeed expresses, an attitude radically intolerant.

It must, too, be pointed out that the sincerity of such one-sided pleas is often, perhaps usually, at least doubtful. A man pleading for the toleration of his own little sect will feel, if he is at all intelligent, that it would be imprudent to let it appear that he would not, if he could help it, give to others what he asks for himself. Nor would it often be easy to find any sort of reason for tolerating him that would not apply generally. It is likely, therefore, that he will assert principles that, in power, he would not act upon. It is likely that he will provide himself a way of escape by using vague phrases about blasphemy and

idolatry. He may, quite probably, assert some general principle without seeing how much wider an application it logically has than he would wish to give it. In all this there may be no conscious dishonesty. But, honest or dishonest, he is no advocate of toleration.

Chapter III

CATHOLIC PLEAS

In 1623, says Fuller, 'all men's mouths were filled with a discourse of toleration, for or against it'.[1] Whatever amount of truth there may be in this certainly exaggerated statement, it can only refer to the question of a conditional and partial toleration of Catholics. That question had been regarded, and discussed, as a practical one, at least from 1606 onwards. Discussion upon it was perhaps the most important result of Bancroft's dealings with the Catholics.

The Catholics had been pleading for toleration from the very beginning of the reign. In 1603 was published *A Supplication to the King's Majesty*. It is a prayer and an argument for the toleration of Catholicism merely. The authors went so far as to hint that it would be reasonable even to allot a few benefices and churches to Catholics, after the example of France, 'where diversity of religion is tolerated and infinite good found to arise thereof'.[2] But all they positively asked for was the repeal of penal statutes and toleration for Catholic private worship. They argued that this amount of concession would suffice to make all English Catholics whole-heartedly loyal. They declared that the Catholic Church teaches the duty of obedience to civil authority far more uncompromisingly than do Protestant Churches. There is at least as good reason, they argued, for tolerating Catholics as for tolerating Presbyterians who would if they could destroy the existing Church government in England. To secure the support of the Catholics would strengthen the position of the English Church threatened by these 'Puritans'.

All this special pleading on the grounds of expediency, sound or not, was quite irrelevant to the main question and indicates no movement of opinion one way or the other. But one really relevant point the *Supplication* did make; and it was the same point that Robert Parsons, writing under the name of Doleman,

[1] *Church History of Britain*, 1655, X, 7, ed. Nichols, vol. III, p. 352.
[2] *A Supplication*, p. 3.

had made in 1594.[1] The Catholics, said the authors, refuse to go to church on grounds strictly conscientious; and they declared, boldly, that 'an erroneous conscience bindeth as strongly . . . as doth the conscience that is best and rightly informed'.[2] They may be wrong, but, it was implied, it cannot be right to penalize them for obeying the dictates of conscience.

Parsons himself, in a tract published in 1608,[3] repeated with some amplification his argument of 1594. In his *Judgment*, as in the *Supplication*, it is the only point made that bears on the general question.[4] Writing as Doleman, he had declared that under all circumstances a man is bound to do what, rightly or wrongly, he conceives to be his duty. Every man must abide by his own religion and act consistently with what he believes, whether he be right or wrong. A man, he says in 1608, may put up with any degree of oppression so long as he can do so conscientiously, but the oppression of conscience 'no man may bear patiently, though he would never so fain. For if he yield therein, he offendeth God.'[5] It might seem to follow that there could exist no right to force a man to offend God by disobeying his conscience. That seeming implication Parsons had not made clear in 1594; he now frankly accepted it. To force a man to take an oath which afflicts his conscience must needs, he declared, be a grievous sin.[6] And, boldly generalizing the assertion, he declared that 'neither breathing nor the use of common air, is more due unto all than ought to be liberty of conscience to all Christian men'.[7]

One may fairly doubt the sincerity of this utterance. The main argument of Parsons' tract is directed to showing that the oath of 1606 is an unjust imposition on the conscience of Catholics and is totally needless because they are already perfectly loyal, and because the Catholic Church teaches submission to all established secular rulers in all civil affairs. It was surely not for Parsons, who had done what in him lay to bring about Spanish invasion of England, to say that. It is of course true that his argument remains exactly the same

[1] *A Conference about the next Succession to the Crown of England*, 1594.
[2] *A Supplication*, p. 45. [3] *The Judgment of a Catholic Englishman*, 1608.
[4] The same argument appears in *An Epistle Apologeticall*, published in 1605; which adds nothing. The author of this made the oft-repeated but irrelevant assertion that you cannot by force change a man's opinion. So far as I know no one ever said that you could.
[5] *The Judgment*, pp. 20–1. [6] Ibid., p. 22. [7] Ibid., p. 38.

whether it expresses his own convictions or not. But it is also true that if it be insincere it affords no evidence of any movement of thought in the direction of toleration.

It is perhaps also worth remarking that the argument itself, which to many might seem conclusive, is conclusive only in the absence of certain beliefs or assumptions on the other side. It did not, strictly and in any case, follow that because it is a man's duty to abide by his religion, it must needs be unjust to penalize him for so doing. Many at the time might have answered that so long as a man believed wrongly he was in the unfortunate position of being unable to do right. By believing wrongly he offended God; by denying his faith he merely offended again. No injustice is done to a man by forcing him to deny a faith for which he will anyhow be damned. That way of thinking may seem absurd to us, but it cannot be said to be illogical; and there were many who thought like that.

Fuller's account of what men were saying in 1623,[1] though certainly incomplete, probably fairly represents current argumentation on the question. It was argued, he says, in favour of a toleration for Papists that they had for some time been quiet; that in France the Huguenots were tolerated without ill results; that it was desirable to conciliate Spain; that Protestantism had nothing to fear from free controversial competition with Popery, and that Protestant clergy would be the more 'painful' and zealous for having to compete with the Papists. On the other side, it was being said that Papists were only quiet from sense of weakness; that they were all bound to believe that the Pope can depose Princes; that you must not offend the King of Heaven to please the King of Spain, even if that were at all worth doing; that Protestant clergy are likely to suffer in competition with Papists, because the promoters of falsehood are always more zealous than the upholders of truth and because there are many more fools than wise men; and that to tolerate Huguenots is quite a different thing from tolerating Catholics. What strikes me about all this superficial talk is the entire absence of reference to the one serious argument adduced by the Catholic writers.

Many of these arguments against the toleration of Catholicism appear in the writings of a certain Gabriel Powel, who

[1] *Church History*, X, p. 7.

set himself to answer the Catholic pleas in a series of tracts. These writings are quite worthless as argument but are of some significance. They seem to represent the sort of view that was prevalent in the House of Commons. Like Fuller's disputants, Powel entirely ignores the main argument on the Catholic side. He proceeds by way of sweeping counter-assertions, for which, as a rule, no reasons are offered. Papists are bound by their belief to be at least potential traitors. Catholics do not really believe in toleration; they want it only as a road to dominance. Men must not halt between two opinions; therefore toleration of two religions is unlawful.[1] The toleration of Popery must needs be offensive to God, since Popery is anti-Christian. Diversity in religion 'dissolveth the bands of obedience . . . amongst subjects'.[2] If any sect may profess whatever it pleases 'who seeth not that such wicked licence tendeth to abolish all religion?'[3] The author declares that he abhors the sort of persecution in which Papists habitually indulge. Men cannot be compelled to faith and heretics should be punished only with 'convenient sharpness' and 'kept in obedience by good laws and affliction'.[4] Protestants, he declares, can safely be tolerated in Catholic states, simply because their doctrines are 'the only word of God':[5] a fact presumably recognized by the Catholic authorities. He exhorts King James to suppress idolatry and 'cause all within your dominions to embrace that only true religion which your happy predecessors, King Edward VI and Queen Elizabeth . . . constantly maintained'.[6]

All this talk about whether or not it was expedient under existing circumstances to grant a measure of toleration to Catholics did not touch the main question. That question was not even stated. The one argument used that bore upon it was entirely ignored.

On the other hand, men's attitude towards a proposal of even the most limited measure of toleration is necessarily significant to some extent of their attitude to the larger question.

[1] *The Catholike's Supplication*, etc., 1603, p. 34. This gives the text of the supplication with marginal comments and counter-arguments.

[2] *A Refutation of an Epistle Apologeticall*, 1605, p. 39. There is no copy of this in the B.M., but there is one in the Library of Lambeth Palace.

[3] *A Refutation*, p. 42.

[4] *A Refutation of an Epistle Apologeticall*, p. 66.

[5] *A Consideration of the Papists' Reasons of State and Religion for toleration of Poperie in England*, 1604, p. 30. This was a second answer to the *Supplication* and added practically nothing to the first.

[6] *The Catholike's Supplication*, p. 15.

The mere fact that the particular question seems to have been treated mainly as one of mere expediency is of itself highly significant. It implies that, to many, there was no real objection to toleration, even of Popery, except on grounds of temporary convenience. Powel's sweeping assertions too, even though unbacked by reasoning, are significant of a view that seems to have been generally taken. His crudities are reflected in the speeches of Eliot and of Pym. Again, this controversy affords evidence of the persistence, in spite of Widdrington and the French Gallicans, of the belief that Catholics were necessarily believers in the Pope's right to depose Princes. That belief was seriously to affect opinion throughout the century. Significant, too, of a widespread attitude is the *naïf* and sincere conviction that toleration of Protestants by Catholics is a quite different thing from toleration of Catholics by Protestants.

But certainly it is true that the records of this controversy afford no evidence of any movement of thought on the main question or even of any distinct consciousness of its existence. Nor was anything said on either side that was at all new. The controversy left things exactly where they were.

Chapter IV

THE CONGREGATIONALISTS

§ 1. CONGREGATIONALISTS IN GENERAL

WHATEVER views some of them developed later, the mass of the Congregationalists of James I's time were radically hostile to the toleration of any form of religion differing widely from their own. They all, of course, held that it was not for the magistrate to force any man to become a member of a Church. Their conception of what constituted a 'church' made it impossible to think otherwise. That view, however, is perfectly compatible with extreme intolerance.

The *True Confession* issued by the congregation of Henry Ainsworth at Amsterdam in 1596,[1] had declared that 'it is the office and duty of Princes and Magistrates . . . to suppress and root out by their authority, all false ministries, voluntary religions and counterfeit worship of God.' That view seems to have been generally held among the separatist congregations in England, Holland and America. A Congregationalist petition of 1603 asked that 'all monuments of idolatry . . . temples, altars, chapels and other places dedicated heretofore by the heathen or anti-Christians to their false worship might be rased and destroyed.'[2]

It has been claimed for John Smyth, who was head of a separatist congregation in Lincolnshire in 1606, was at Amsterdam in 1608 and died in 1612, that he was the first of the separatists to plead for full liberty of conscience. It does not, however, appear from his writings that that was what he did. It was certainly only late in his life that he attained any degree of even partial tolerance. In 1605 he wrote, with pious horror, of countries, 'where there is a Toleration of many Religions, whereby the kingdom of God is shouldered out-a-doors by the devil's kingdom'. 'Wherefore', he added, 'the magistrates

[1] This *Confession* was republished in 1602, 1604 and 1607. The full text is in Williston Walker's *Creeds and Platforms of Congregationalism*, 1893.

[2] Quoted by Barclay, *Inner Life of the Religious Societies of the Commonwealth*, ed. 1876, vol. III.

should cause all men to worship the true God or else punish them with imprisonment, confiscation of goods, or death, as the quality of the cause requireth.'[1]

That, evidently, is decisive as to Smyth's views in 1605. Later his attitude certainly changed; and we may fairly suppose that he experienced a reaction against the extreme narrowness of his fellow sectaries in Holland. But the passage that has been quoted from his later writings in support of the claim made for him proves little to the purpose. 'The magistrate', he wrote, 'is not, by virtue of his office, to meddle with religion or matters of conscience, to force and compel men to this or that form of religion or doctrine: but to leave Christian religion free to every man's conscience and to handle only civil transgressions.'[2]

Ever since the early days of Browne and Barrow, the Congregationalists had insisted that it was not the business of the magistrates to compel men to true religion. When Smyth spoke of leaving Christian religion free, did he mean that opinions that he held to be idolatrous, blasphemous or anti-Christian should be left free? It seems highly improbable. In his very last writing he expressed penitence for his earlier intolerant attitude towards certain of his own friends who had disagreed with him. 'I profess', he wrote, 'that difference in judgment for matter of circumstance, as are all things of the outward church, shall not cause me to refuse the brotherhood of any penitent and faithful Christian.' That is very well as far as it goes; but it goes very little way and implies limits that would seem to have been narrow.

But to the Article that has been quoted from his *Propositions* Smyth added another. The two are really quite inconsistent; and the second suggests an entirely different interpretation of his later attitude. In his later years and perhaps as early as 1608, Smyth left the 'church' with which he had been associated and joined the Mennonites. 'If the magistrate', he wrote, 'will follow Christ . . . he must love his enemies and not kill them, he must pray for them and not punish them . . . he must suffer persecution . . . and that by the authority of magistrates, which things he cannot possibly do and retain

[1] *A Patterne of True Prayer*, 1605. *Works*, ed. Whitley, vol. I, p. 166.

[2] Article 84 of *Propositions and conclusions concerning Christian Religion*. *Works*, vol. II, p. 748.

the revenge of the sword.'[1] If this means anything, it means that no Christian man ought to be a magistrate; that in fact there ought to be no such thing as magistracy. If Smyth really came to believe that all coercive government was evil, then, of course, he must have believed that there ought to be no penalties for heresy or dissent. But in that case, not only heretics, Catholics and infidels, but robbers and murderers also must equally be 'tolerated' in the same sense and for the same reason. To believe that is not to believe in the toleration of all religions as just or as expedient. It is simply to believe that no one, however noxious, should ever be punished. Whatever exactly Smyth may have believed in 1608, he certainly failed to express any definite or coherent view.

Another Congregationalist writer, Henry Jacob, in his *Humble Supplication*, of 1609,[2] advanced a proposition which had at least some bearing on the question of toleration in general. This tract, issued in the name of 'the silenced and disgraced ministers of the Gospel' and addressed to King James, is, intentionally, nothing more than a plea for the toleration of congregational 'churches'. There is a lot of the usual ignorant denunciation of the bishops and a demand for the suppression of Roman idolatry and the abolition of 'human devices'. The author seems to have been unable to believe that any one could really disagree with his notion of the proper constitution of a 'church'. He keeps repeating that all he asks is 'the liberty of practising and enjoying the holy ordinances enacted and left by the Lord for the perpetual direction . . . of his churches'.[3] He cannot believe that the bishops really think that episcopacy represents the will of God. King James also is, apparently, credited with knowing better.

Jacob argued the case almost entirely on the grounds of expediency. Insistence upon uniformity, he declared, produces friction and disturbance, whereas the toleration of congregational churches would at once put a stop to the prevalent disputes and dissensions. The new canons are objected to by a large section of the people. This consideration led the author

[1] *Propositions and Conclusions*, Article 85.

[2] *An humble Supplication for toleration and liberty to enjoy and observe the ordinances of Christ Jesus in the administration of his churches, in lieu of human constitutions*, 1609. B.M. 4139, a. 44.

[3] *A Humble Supplication*, p. 5.

on to lay down a far-reaching general principle. 'A Prince', he declared, 'is, by virtue of his royal function and office, tied to distribute in equal and proportionate sort the testimonies of his love and care to the good of his people.'[1] He therefore asked the King, 'to debate with your royal self, whether it stand with the received axioms of policy', to favour and support one section of his subjects against another 'no less if not more loyal'.

Jacob's language was far from being lucid. Apparently he was arguing that, since it is the King's duty to act impartially, insistence on general obedience to the new Canons, representing the views of one party only, cannot be just. A King cannot justly favour one party among his subjects more than another, so long as both are loyal. He has no right to take sides. Whether Jacob quite knew what he was saying is very doubtful. Evidently, the principle he came near stating has consequences wider than he and his friends wished for. He took care to guard against the supposition that it would apply to Catholics. But in the development of thought on the general question his suggestion had, perhaps, some value.

In spite of the speech to the *Mayflower* 'pilgrims' that has been attributed to him, John Robinson seems to have held much the same views as Ainsworth on the subject of the magistrate's duty. That speech, indeed, indicates a breadth of view unusual among Congregationalists. Yet even supposing that the text we possess[2] represents substantially what Robinson said, it does not imply a readiness for any wide toleration.

Whether the speech be really of 1620 or only of 1646, it is so fine and stately an utterance that I cannot forbear full quotation. 'Brethren,' John Robinson is reported to have said to the departing members of his congregation, 'we are now quickly to part from one another, and whether I may ever live to see your faces on earth any more, the God of heaven only knows; but whether the Lord has appointed that or no, I charge you before God and his blessed angels that you follow me no farther than you have seen me follow the Lord Jesus Christ. If God reveal anything to you by any other instrument of his, be as ready to receive it as ever you were to receive any truth

[1] *A Humble Supplication*, p. 26.

[2] The text we have is derived from Edward Winslow's *Hypocrisie unmasked*, published in 1646. It appears to represent Winslow's recollection of what he had heard twenty-five years earlier.

by my ministry: for I am verily persuaded, the Lord has more truth yet to break forth out of his holy word. For my part I cannot sufficiently bewail the condition of the reformed churches, who have come to a period in religion and will go at present no farther than the instruments of their reformation. The Lutherans cannot be drawn to go beyond what Luther saw: whatever part of his will our God has revealed to Calvin, they will die rather than embrace it: and the Calvinists, you see, stick fast where they were left by that great man of God, who yet saw not all things. This is a misery much to be lamented, for though they were burning and shining lights in their times, yet they penetrated not into the whole counsel of God; but were they now living would be as willing to embrace further light as that which they first received. I beseech you to remember it is an article of your church-covenant that you be ready to receive whatever truth shall be made known to you from the written word of God. . . . For it is not possible the Christian world should come so lately out of such thick anti-christian darkness and that perfection of knowledge should break forth at once.'

This speech might quite possibly have been made in 1620. Dexter, the historian of Congregationalism, was of opinion that the text we have misrepresented what had actually been said, and that the original speech probably referred only to the disputes among Congregationalists about the exactly proper constitution of their churches. In that case Robinson was only saying that dogmatism on that subject was a mistake. Unless, however, the content and the subject of the speech have both been entirely changed, that view of it is impossible. On the assumption that it was made substantially as we have it, it has been said that the speech 'marks a stage in the evolution of religious liberty.' But, taking the report as it stands, what does it amount to?

Robinson is saying that none of us, not even the wisest, has as yet unravelled or understood the full meaning of the revelation in the Scriptures. There is yet more to be found there than any one knows. None of us, therefore, can be sure quite how far our present opinions represent the truth. It seems to follow that, just as all of us should be ready to receive more light, it must needs be unjust to condemn or to penalize others

who have received even less light than ourselves. John Robinson himself may well have drawn that inference. But there is no reason to suppose that he would have been ready to extend toleration to those whose opinions seemed to him not to rest on Scripture or to those who still dwelt in what he calls anti-Christian darkness. There is, indeed, definite reason to suppose the contrary. In 1621, the Synod of Dort pronounced Arminians incapable of preaching or teaching in any school or university and declared that absolute truth, never to be questioned, was stated in the Netherland Confession and the Catechism of Heidelberg. John Robinson, in the very last writing of his life,[1] elaborately defended all the Synod's findings.

It seems, then, that among Congregationalists generally there was little if any movement towards anything that can be called a theory or a principle of toleration. The highly typical view, expressed by Ainsworth's congregation, is a flat negation of any such principle. Henry Jacob, incidentally and confusedly, asserted a principle of which he neither saw nor would have accepted the implications. John Smyth, if he believed that all coercive government was an abomination, condemned the punishment of heretics only as he condemned the punishment of murder or brigandage. For him, in that case, religious toleration was a mere necessity; and the expression of that view was evidently likely to set people against it. Even Robinson went no further than to urge mutual charity among those whose religion, founded on searching the Scriptures, was of the same general type as his own. All the more remarkable is it to find that among Baptist congregations there was going on, confusedly and haltingly, a movement towards wider views.

§2. THE BAPTIST PLEAS FOR TOLERATION

A certain ambiguity attaches to the term 'Baptist'. By their enemies, at this time and later, they were usually spoken of as Anabaptists. Literally taken, that term was rightly applied to them. But actually, at all events after 1640, the use of it suggested, and was intended to suggest, a connexion with the fanatics of Münster. There was in reality no such connexion.

[1] *A Defence of the Doctrine propounded by the Synod at Dort*, 1624.

If our English Baptists derived from any of the continental Anabaptist bodies, it was from the Mennonites of Holland.

The first English Baptist church of the seventeenth century was formed by secession from the Congregationalist church at Amsterdam. It was members of this group who, in 1611, established the first Baptist church in England. But only a few years later, the term Baptist, in England, covers two distinct sets of congregations with very different beliefs. The 'church' of Helwys, established in England in 1611, was the starting point of the development of the congregations of 'General Baptists'. The General Baptists were Arminian; and far more Arminian than any High Churchman. They believed in free will and the possibility of salvation for all. But in 1616, a secession from Henry Jacob's congregation in Southwark resulted in the formation of the 'Particular Baptists'. These held the Congregationalist conception of the Church and denied the validity of infant baptism, but were, in other respects, orthodox Calvinists. It may be added that, by 1626, there seem to have been at least three congregations of General Baptists in London and some four others elsewhere in England.[1]

The first Baptist pronouncement that looks like the statement of a principle of religious liberty for all, appears in a *Confession of Faith*, issued by the original church of Helwys in 1611. It was there declared that all men should have liberty of conscience in matters of religion. The *Confession* went on to refer to the parable of the tares and to the principle of doing to others as we would have them do to us. This may well not have signified to the authors nearly so much as it said. But far more explicit declarations followed. In 1614, appeared Leonard Busher's *Religious Peace*,[2] and in 1615, the *Persecution for Religion judg'd and condemned*,[3] of an anonymous writer. The two say almost exactly the same things. If, as seems probable, both writers were members of the church of Helwys, we may

[1] My authority for this last statement is the highly interesting and scholarly study of Miss L. F. Brown, entitled: *The Political Activities of the Baptists and Fifth Monarchy Men . . . during the Interregnum*, 1912.

[2] Busher's tract, *Religious Peace or a Plea for Liberty of Conscience*, was republished in 1646, when the toleration controversy was at its height. That edition had a preface signed H. B. which probably stands for Henry Burton.

[3] This has been ascribed to John Murton, a member of the congregation of Helwys. It was printed in Holland and reprinted in 1620 and in 1662. The text of both these tracts is given in E. B. Underhill's *Tracts on Liberty of Conscience*, 1846. That of Busher is from the text of 1646.

fairly suppose that their views were those of that particular little congregation.[1] How far they represented the ideas of Baptist churches developed later, there seems to be no evidence to show. But the Baptist *Humble Supplication* of 1620 is distinctly less far-reaching.

Practically everything that these first two writers had to say is said in Busher's tract. The tract *Persecution . . . judg'd* is still more crude and confused than Busher's and adds nothing but irrelevance. Busher's production is certainly remarkable in more ways than one; but highly exaggerated claims have sometimes been made for it. It is the work of a very simple, childishly naïve and very ignorant man. Nothing appears to be known about him except what can be gathered from his tract. There he appears as an obviously honest man who had assimilated a good deal of the Sermon on the Mount. Yet his outlook can hardly be called tolerant. He seems unable to understand that people may honestly and profoundly disagree with him. He constantly imputes disagreement either to stupidity or hypocrisy. He cannot believe that Papists and episcopalians really believe what they say; nor does he seem to know what they did say. He appears to have regarded them as quite certain to be damned if they did not repent. Yet he, himself, is, oddly, far more tolerant than his God. Though some of his arguments are childish and many irrelevant and though he makes his points in no kind of order and exhibits strange ignorances and illusions, he nevertheless made out quite a fair case.

Much of Busher's argument was directed to showing that religious toleration, as he understood it, is always and everywhere expedient. To begin with, persecution is necessarily futile, in that it cannot possibly either produce true religion or alter men's convictions. True religion 'is gotten by a new birth', which comes by the help of God, from the study of the Scriptures and can come no otherwise.[2] It is plain, therefore, that it cannot be produced or maintained 'by fire and sword'. Nor can 'false and anti-christian' religion be suppressed by

[1] Busher's tract, however, seems to have been written in Holland. He uses the words 'when they come hither or to some other free city or country'.—Ed. Underhill, p. 31.

[2] *Religious Peace. In the addresses to King and Parliament*, ed. Underhill, from which all my quotations are taken.

violence. 'You may force men to church against their consciences, but they will believe as they did afore when they come there.'[1]

Persecution, in fact, can only make hypocrites, and to do so is highly undesirable. It means that men are forced into fatal sin. It means that while honest men are driven out of the country, the dishonest remain. In the unpleasant condition of society thus produced, no one can tell whether he is living among true believers or among hypocrites. But persecution does not only produce hypocrisy, it also creates exasperation; and this is dangerous. Busher suggested that there would have been no Gunpowder Plot had the Catholics not been 'forced to church'.[2]

It is somewhat remarkable that Busher insisted, further, that persecution is bad for trade. To drive men out of the country, he says, involves 'a great impoverishing'. If toleration be established 'great benefit and commodity will redound . . . by the great commerce in trade and traffic, both of Jews and all people which now, for want of liberty of conscience, are forced and driven elsewhere'.[3] This seems to be the first of many assertions of the commercial value for England of religious toleration.

Defence of systematic intolerance on the plea of maintaining national unity in religion was to Busher both absurd and unintelligible. To him, as to all the Congregationalists, the conception of a nation united in a Church seemed merely nonsenical. 'Great ignorance', he naïvely declares, 'do the bishops and their ministers show, when they think that the whole nation of people is the Church of Christ.'[4] Argument against toleration from this point of view is thus, quite simply, disposed of.

On the other hand, he argued, from 'permission of conscience and freedom and liberty of the Gospel', no danger need be apprehended. Error may safely be allowed to endeavour to propagate itself. 'They are inconstant and faithless men, or at least very ignorant, that think error will overcome and prevail against the truth.'[5] With engaging simplicity he revealed what it was that he looked for and why he thought there was no danger. 'I do verily believe that, if liberty of conscience be

[1] *Religious Peace*, p. 18. [2] Ibid., p. 32. [3] Ibid., p. 64. [4] Ibid., p. 56. [5] Ibid., p. 52.

granted, the spiritual kingdom of these idol bishops will in time fall to the ground of itself, as the idol Dagon fell before the ark.'[1] He actually hoped, he tells us, some day to see the bishops, convinced and penitent, come in a body to the King, to confess their errors and wrongdoing and beg to be abolished.[2]

Busher believed every word he said: his sincerity shines through his most ridiculous utterances. But his argument for the permanent expediency of toleration did not express his profoundest convictions. Two things there were that above all he was sure of. He was sure that persecution was inconsistent with the Gospel; and he was sure that, where it existed, it would always be the true believers who were persecuted.

With pathetic earnestness he endeavoured to convey his certainties to King James. 'May it please your Majesty and Parliament', he wrote, 'to understand that by fire and sword to constrain princes and peoples to receive the one true religion of the Gospel is wholly against the mind and merciful law of Christ.'[3] It did not matter that James was hardly doing as much as that. 'Persecution is a work well pleasing to all false prophets and bishops, but it is contrary to the mind of Christ, who came not to judge and destroy men's lives, but to save them. . . . I read that Jews, Christians and Turks are tolerated in Constantinople and yet are peaceable. . . . How much more ought Christians to tolerate Christians whereas the Turks do tolerate them! . . . It is not only unmerciful but unnatural and abominable, yea monstrous, for one Christian to vex and destroy another for difference and questions of religion.'[4] He added a warning. 'Many, at the day of judgment, will be for ever burned for killing and burning innocent Christians; but no man shall be damned for saving their lives.'[5] All this reads like a far-away echo of Castellion. But the validity of the argument from the nature of Christ's teaching depends upon initial assumptions. Castellion had made much of it and Calvin had been at no loss for an answer

Yet Busher would, perhaps, have done better to leave his case there. What else he had to say did but weaken it. He could not separate his conviction that persecution was always

[1] *Religious Peace*, p. 66. [2] Ibid., p. 63. [3] Ibid., opening Address.
[4] Ibid., p. 24. [5] Ibid., p. 76.

likely to fall on true believers from his conviction that all true believers were Baptists or, at least, Congregationalists. He did, indeed, confusedly suggest that if the State as such decides what men are to believe, it is truth that will suffer. He perceived that it is minorities only that are likely to be persecuted, and he declared that true Christians are always a minority.[1] But he could not help letting it be seen that his most compelling reason for desiring toleration was his certainty that, if any one were persecuted, people like himself were sure to be. By persecution, he says, those 'that shall believe the apostolic faith' are driven out into exile.[2] 'So long as persecution continue, so long will the apostolic church continue scattered and persecuted into the secret places of this world.'[3]

Any impression made by his argument was likely to be further weakened by his evident inability to understand that anything was to be said on the other side. His notion of how persecution comes about was almost grotesque. He seems to have been under the impression that none but episcopal churches persecuted any one. Bishops, he says, 'cannot abide nor endure the faith and discipline of the apostolic church, because it will be the overthrow of their blasphemous and spiritual lordships'.[4] He repeats, again and again, that they know perfectly well that they cannot defend their doctrine but by fire and sword. All persecution, he declared, derives from Rome, as also do our English bishops and their false religion. All churches that did and do persecute are descended from the false, anti-christian church.[5] Unwittingly he was denouncing Calvin's Geneva as descended from the Scarlet Woman. But his ignorance is really astonishing. The Roman Church, he wildly asserted, persecuted Christianity. It persecutes, he declares, those who hold that Jesus was the Lord from heaven and ascended thither.[6] But these notions do not really affect his argument.

All this does not explain exactly what he meant by toleration or how far he would have it extended. It is clear that he would have no one put to death for his opinions; but in spite of the case of Legatt, that, for England, was little to the purpose. He never, in fact, made it quite clear what he wanted. Light,

[1] *Religious Peace*, p. 33. [2] Ibid., p. 28. [3] Ibid., p. 42.
[4] Ibid., p. 43. [5] Ibid., p. 46. [6] Ibid., p. 44.

however, is thrown upon his conception of toleration, by certain concrete proposals. Persons whose religion is 'tainted with treason', Busher suggested, should be debarred from public office and forbidden to reside within ten miles of London or approach to within ten miles of the court. This probably refers only to the Catholics. He would have such people compelled 'to wear a black hat, with two white signs, the one before, the other behind, in open sight';[1] so that they may be known, if not avoided. More serious is his proviso that such people are not to be allowed 'to make any assembly or congregation'. Busher did not wish Catholics to be forced to church, but he was not prepared to tolerate their idolatrous worship, unless in household gatherings.

Even more unhappily significant was his notion of freedom in the expression of religious opinion. He proposed 'that for the more peace and quietness, and for the satisfying of the weak and simple among so many persons differing in religion, it be lawful for every person or persons, yea Jews and Papists, to write, dispute, confer and reason, print and publish any matter touching religion, either for or against whomsoever; always provided they allege no fathers for proof of any point of religion, but only the holy scriptures'.[2] Every one, in fact, is to be allowed to argue on the basis of Busher's own assumptions. Even Jews, it appears, must argue only from the Christian scriptures. It never occurred to Busher that he might be thanked for nothing. Probably he did not believe that any one could honestly claim a right to argue about religion from anything but the sacred text. It seems evident that he never conceived of toleration in any wide sense. When he spoke of religion he had always in mind the type that was his own. There is in his system less than elbow-room for Catholics, little, if any, more for George Herbert or Nicholas Ferrar, and certainly none at all for Herbert of Cherbury.

Busher's ideal included not only what he conceived of as toleration, but also the due execution of what he calls the 'moral and judicial law of God'.[3] From the grant of liberty of conscience and the due observance of this law, he expected wonderful results. 'Then', he wrote, 'shall not men, women and youth be hanged for theft. Then shall not the poor, lame,

[1] *Religious Peace*, p. 50. [2] Ibid., p. 51. [3] Ibid., p. 67.

sick, and weak ones be stocked and whipped; neither shall the poor, stranger, fatherless and widows be driven to beg from place to place. . . . Then shall not the great defraud and wrong the small; neither the rich oppress the poor by usury and little wages.'[1] The passage is, perhaps, the most remarkable in the tract. It foreshadows a great deal that was to come later in the aspirations of Fifth Monarchy men and Quakers. At the very root of Busher's religion was his understanding of the Gospels; and from that sprang alike his plea for toleration and his dream of a new world of righteousness and social justice.

The Baptist tract that was published in 1620, under the title *A Most Humble Supplication*, added nothing to Busher's argument. But it did add something that Busher did not say but may well have believed to be true. It is for the most part, the author says, the 'simple, poor, despised' people who understand God's will and obey. 'The learned in human learning do commonly and for the most part err and know not the truth, but persecute it.' This, he asserted, is often because they fear the truth lest, by reason of it, they should find themselves bereft of their 'dignities'. We, earnest searchers of the Scriptures, cannot reasonably be expected to take our opinions from the learned. His simple conclusion was that it must needs be wicked to persecute us. The tract, with its exaltation of godly ignorance and its opinion of the uselessness, at best, of human learning, expressed a point of view that, later, was to become common and clamant.

These Baptist tracts do certainly indicate a real movement of thought in the direction of toleration among these little groups of humble people. But their value has been much over-estimated. The writers had no idea of anything like complete toleration for religion of any type other than their own. They had no conception of toleration in the full sense. Their writings probably convinced no one. Busher made out a tolerably good case, but one that was very far from being conclusive. No argument for a toleration so limited as his, could possibly be conclusive. One really strong point he came near making, when he confusedly suggested that it is truth that will suffer if the State determines what is to be believed. But he did not

[1] *Religious Peace*, p. 70.

really make the point or even see it. He was only sure that, if any one were persecuted he and his like would be. That fact did not, as he naïvely supposed it did, of itself constitute a reason why he and his like should not be persecuted. It needs to be added that, in the course of the great controversy that began on this question during the Civil War, Busher's arguments were constantly repeated and their insufficiency as frequently exposed.

Chapter V

INDIRECT APPROACHES

THERE is really no line that divides absolutely the development of political thought from the movement of thought as a whole. Any line practically drawn is arbitrary. It might, for instance, even be said that all free speculative activity in whatever direction, all criticism of generally current assumptions or conventions of thought, must in some degree make for tolerance. But that enticing proposition is only partially true. A man who thinks himself justified in denouncing views with which he disagrees is not likely to produce anything but resentment, unless it be laughter. An intolerant man is unlikely to influence others to tolerance. A thinker on unconventional lines may, after all, be a very foolish person, stupid enough to deny to others the freedom he desires for himself. In the seventeenth century the expression of views excessively unorthodox certainly did something to stiffen the resistance to legal toleration.

It can, however, hardly be doubted that all thought which tended to produce the recognitions on which alone a policy of toleration could be solidly based, was a factor in the development of legal toleration of opinion. It might well be that a writer who showed no sign of having ever considered the question as one of practical politics, should none the less operate as an important factor in the evolution of tolerance and freedom. It would probably be impossible to find positive evidence of the fact, yet it seems that this must have been the case with Shakespeare. That wonderful mind, shining like the sun, as Landor said, on the just and the unjust, presented aspects and possibilities of human relations with a freedom that seems unlimited. He claimed sympathy even for his despised, persecuted and murderous Jew. He did not scoff even at Puritanism: it was Sir Toby, the tippler, and Sir Andrew, the fool consummate, who did that. So far as his steadily growing influence extended, it must, surely, have made for tolerance.

Even the casuistry of Perkins and Ames may be imagined

to have done something to induce tolerance, if only by making men ask why they called this or that good or evil. The speculations, again, of William Pemble as to the nature of things in general and of the soul of man in particular, may have had small value as philosophy, but were at least an attempt to give meaning to conventional beliefs.[1]

But of all the writers who, under James I, in one way or another, indirectly prepared the way for a rational theory of toleration, the most important, if only by reason of the weight of his reputation, was Francis Bacon. In some respects it is true his standpoint was simply Erastian: he was orthodox in the Elizabethan sense. 'Heresies and Schisms', he declared, 'are of all others the greatest scandal, yea, more than corruption of manners.'[2] Nothing is added to show what he meant by heresy; but indubitably schism meant for him the repudiation of any Church by law established. Modes of Church government, rites, and ceremonies were to him things indifferent, to be settled and regulated by State authority. 'When your Majesty hath determined and ordered,' he told the King in 1604, 'every good subject ought to rest satisfied and apply his obedience to your Majesty's laws'.[3]

Bacon was, perhaps, more clear on that point than on any other. But scattered throughout his writings and pervading much of them were far-reaching suggestions of a quite different order. That he was closely and accurately observant of the contemporary development of religious parties is proved by a remarkable passage of his *Advertisement.* There he described the development under Elizabeth, first of the Presbyterian and Congregationalist groups and then of the High Episcopalianism represented by Bancroft.[4] The salient features of those developments were accurately and impartially noted. But it is the commentary that counts for most: 'It is but ignorance', Bacon wrote, 'if any man find it strange that the state of religion, especially in the days of peace, should be exercised and troubled with controversies.'[5] Mischief results, not from controversy,

[1] Pemble's *De Sensibus Internis* and *De Formarum Origine* were published in 1629. A collected edition of his many writings was issued in 1635. None of them were published before his death in 1623.

[2] Essay, 'Of Unity in Religion'.

[3] *Certaine Considerations*, 1604. *Works*, ed. Montagu, VII, p. 64.

[4] *An Advertisement touching the Controversies of the Church of England*, ed. Montagu, pp. 47–8.

[5] Ibid., p. 28.

but from the unreasonable virulence with which it is carried on. So long as 'the high mysteries of faith' are not called in question, controversy of itself will do no harm. It is true, he says, that unity in belief will find practical expression in unity of worship. But he, quite distinctly, suggested that the differing parties worked for a unity that is both unnecessary and unattainable.

His ambiguous phrases concerning heresy and the mysteries of faith exhibit Bacon's habitual caution. Possibly he was vaguely thinking of what Hooker had called 'the very essence of Christianity'. The passage in the *Advertisement* in which he taxed the Puritans with intolerant arrogance has already been quoted. If the essence of Christianity consists in visiting the fatherless and widow in their affliction, the absurdity of virulence in controversy is evident. But in one passage, at least, of his writings, Bacon went much further; suggesting that much of contemporary controversy was mere sound and fury, signifying nothing. Not only do we dispute passionately about the unimportant, but, in our heat and excitement, we fall to dispute over empty words and denounce each other as heretics, when we really agree. 'A man,' he wrote, 'that is of judgment and understanding, shall sometimes hear ignorant men differ, and know well within himself that those which so differ mean one thing, and yet they themselves would never agree. And if it so come to pass . . . shall we not think that God above, that knows the heart, doth not [*sic*] discern that frail men, in some of their contradictions, intend the same thing, and accepteth of both? . . . Men create oppositions which are not, and put them into new terms so fixed, as whereas the meaning ought to govern the term, the term in effect governeth the meaning.'[1]

But it was not in any such suggestions as these that lay the chief value of Bacon's work in this connexion. What was far more important for thought was the suggestion pervading his most ambitious writings of vast possibilities of new knowledge yet to be won and of consequent and incalculable change. The *De Augmentis Scientiarum* of 1623, suggested a hope that a time will come when men will turn from vain controversy about religion and will at last be able to give their minds to

[1] Essay, 'Of Unity in Religion'.

really profitable subjects of inquiry. That hope, implied throughout the book, indicates the gulf that existed between his thought and that of the religious parties of his time.

The *Philosophia libera* of Nathaniel Carpenter, published in 1621, may have operated to some slight extent in the same general direction. It can hardly be called philosophic. It is the work of a man ingeniously but unreasonably captious, an opinionated person in revolt against current assumptions and conventions in education. It exemplifies the fact that the hot and hasty critic of generally accepted beliefs is often angrily intolerant and foolishly dogmatic. Carpenter expressed contemptuous and indignant astonishment at what seemed to him the radically irreligious cult of the classics. Virgil, he declared, is in Hell, and we fuss endlessly about his poems. Men waste their lives in trying to write Ciceronian Latin or Platonic Greek, when it would, plainly, be far more useful to write good English. Aristotle, he declares, is a fetish of the Universities and far more considered there than the Bible. Blessed, in fact, are those who have no classical learning. The book was written in a fashion more calculated to irritate than to convince. If it had any influence it may well have been in a wrong direction. After the Civil War, Carpenter's view of classical learning as a hindrance to the study of God's Word, tending to sheer waste of time if not to actual ungodliness, had dangerously numerous adherents. On the other hand, the clear implication of his book that generally received opinions may be mere superstitions, was capable of producing fruit which he would himself have disliked extremely.

Far more important was the *Apologie* of George Hakewill.[1] This book was an elaborate attempt to exhibit human progress as an historical fact. Hakewill asserted and tried to prove that existing European civilization was superior to anything that had been earlier. The notion of a golden age in the past, he declared to be mere superstition. So far from having degenerated, as people habitually assume, man has continuously improved on himself. In bodily and in intellectual capacities

[1] *An Apologie of the power and providence of God in the government of the world, or an examination and censure of the common errour touching nature's perpetuall and universall decay.* Published in 1627 with a second edition in 1630. Hakewill was born in 1578, became Rector of Exeter College, Oxford, in 1642 and died in 1649.

he is, indeed, still what he was two thousand years ago. But Hakewill argued at length that man has improved morally.[1] This, he thought, might partly be due to our religion, which, he declared, is certainly an improvement on the religions of the pagan world. However that may be, there is no doubt that in manners and morals we have improved on Rome. There have, he admitted, been set-backs. Man progresses, he suggested, rather in spiral fashion than in a straight line. Christianity itself was, for a time, beclouded and corrupted. But in these modern times we have corrected the errors of the Middle Ages.

Our achievements, Hakewill insisted, are, in every direction, equal or superior to those of the ancients. Our historians and poets are the equals of theirs. He cites as testimony Guicciardini and De Thou, Chaucer, Spenser, Tasso, and Clement Marot. So also with our art and architecture; and he calls to witness Albrecht Dürer, St. Peter's of Rome and King's College Chapel. But our lawyers and doctors know their business better than did those of the Romans; and the ancient world made no discoveries equal to those of Tycho, Kepler, and Galileo. In practical and useful invention we have gone far beyond the ancients. Fire-arms, printing, and the compass—'all Antiquity can boast of nothing equal to these three'.[2] As to the two last of these, he was able to cite the authority of Bodin, who may have had doubts about the utility of the first.

After Bodin and Bacon, there is nothing surprising in finding a meditative and scholarly Englishman expressing these ideas. Nor has Hakewill's thesis any sort of direct bearing on the desirability of tolerance in religion. But it must be noted that he insisted strongly that opinions generally held are quite likely to be altogether erroneous. By way of emphasizing the point he enumerated a large number of more or less absurd opinions commonly entertained.[3] He pointed out, also, that the more widely an opinion was spread, the more readily it was accepted without examination.[4] He hardly touched on religion; but the suggestion that generally accepted religious beliefs may be merely superstition, cannot well be escaped. With that went, necessarily, a suggestion that it is at least

[1] In Liber IV of the *Apologie*. [2] *Apologie*, Lib. III, ch. X, ed. 1630, p. 275.
[3] Ibid., Lib. I, ch. I. [4] Ibid., Epistle Dedicatory.

rash to denounce or to penalize people whose religious opinions happen not to be orthodox.

There is, evidently, a profound incompatibility between the manner of thought of Bacon and of Hakewill, and the will to suppress any form of religion that seems to you false. If you see man as slowly improving, as knowing very little but gradually learning more; if you see immense possibilities of greater knowledge and of change in the future—you are hardly likely to believe in the natual damnableness of human nature or to be preoccupied with a scheme of salvation or the need of uniformity in worship. If you see popular beliefs as based largely on ignorance and the beliefs even of the most instructed as likely to be associated with insufficient knowledge, it is not probable that you will desire the forcible suppression of views at odds with common opinion, religious or other. You may, even, see a serious danger of obstructing progress in any attempt to fix religious belief. If you see religious controversies as productive of little but hatred and violence, you will see no use in suppressing the views of one side or the other; though it is possible that you might be led to wish to suppress both. But in a world in which man is essentially a learner he cannot afford arbitrarily to limit inquiry in any direction; and it is impossible to suppress even the most useless speculations without limiting inquiry. It is because both Bacon and Hakewill wrote from a point of view which involves, or at least suggests, all these implications that both, in their degree, must be reckoned as factors in the evolution of rational tolerance.

Chapter VI

THE WISDOM OF JOHN HALES

PERHAPS of all men of the first half of the seventeenth century, it was John Hales whose attitude to the religious controversies of the time was most wholly reasonable and tolerant. Later he was frequently and justly spoken of as 'the ever memorable'. He seems, now, to be almost forgotten, except by scholars. The tolerant outlook was more complete in him than it was in Fuller, or even in Chillingworth. Aware, no doubt, of the difficulties besetting that harassed personage, he refrained from giving advice directly to the Magistrate as such. Yet his writings perhaps amount to the best argument for toleration developed in England before 1644. He was helping to lay foundations for complete liberty of thought.

It was unfortunate for his own times that Hales was averse to the publication of what he wrote. Whether this were due, as Clarendon suggests, to diffidence, or to fear of being drawn into bickerings, few of his writings were published in his own lifetime and still fewer with his consent. The sermon, *Of Dealing with Erring Christians*, was preached at Paul's Cross, and this can hardly be later than 1641. But it does not seem to have been printed till it appeared in the posthumous collection of his writings entitled *Golden Remains*, in 1659.[1] The *Tract concerning Schism* was published, without his leave, in 1642, but written some years earlier. The important tract *Of Enquiry and Private Judgment*, was published as one of four sermons preached at Eton, of which foundation he became a Fellow in 1619.

John Hales was born in 1584 and came of an old land-owning family. He graduated from Corpus Christi, Oxford, and became, in 1605, a Fellow of Merton. There, like Montague, he assisted the Warden, Sir Henry Savile, with his edition of the works of Chrysostom. But it was not his learning that made him remarkable, though Anthony à Wood says he was 'a walking library'. As chaplain to the English ambassador

[1] 'I moved him to print it', says his friend Farindon. This may mean that it was published much earlier; but if so no copy is known.

in Holland, he was present at the sessions of the Synod of Dort and seems to have retained humorous impressions of its intolerant animosities. There, he says, he 'bade good night to John Calvin'. Under Sir Henry Wotton, as Provost, he became a Fellow of Eton in 1619. There, says Clarendon, 'he lived amongst his books, and the most separated from the world of any man living, though he was not in the least degree inclined to melancholy, but . . . of a very open and pleasant conversation'. Now and then he visited London to see his friends, and later, almost as a matter of course, he became a member of Falkland's circle at Great Tew. Over the *Treatise on Schism*, which he wrote in 1636, he came into slight collision with Laud. But though there was much in that book that must have been highly displeasing to him, Laud seems to have seen that Hales could not be reckoned an enemy of any real religion. In 1639, the Archbishop gave him a canonry at Windsor. A few years later, Puritanism, or rather, perhaps, Parliamentary policy, deprived him of his canonry and finally of his position at Eton. He was driven into poverty and forced, at last, to sell his books. 'I reckon it not one of the least ignominies of that age,' wrote Andrew Marvell, 'that so eminent a person should have been, by the inequity of the times, reduced to those necessities under which he lived.'[1] It was in these latter days that Aubrey met him. 'I was received by him', says Aubrey, 'with much humanity: he was in a kind of violet coloured cloth gown with buttons and loops—he wore not a black gown—and was reading Thomas à Kempis. . . . He loved canary,' it is added, 'but moderately, to refresh his spirits. He had a bountiful mind.'[2] He died, in 1656, one of the finest minds of his time, and not, then, unappreciated.

Hales was as much a rationalist as Hooker had been, and in the same sense. 'The ways', he wrote, 'that lead us to the knowledge of all conclusions, of which we have any knowledge . . . are but two; first experience, secondly ratiocination.'[3] A man, he declared, has no more right to lay by his reason and rely upon the opinions of others, than to 'call for the use of other men's arms and legs'. If we take things on

[1] *The Rehearsel Transposed.*

[2] *Brief Lives*, ed. Clark, I, p. 279. I make no apology for the partial irrelevance of some of these details concerning a neglected great man.

[3] *A Letter concerning the Weapon Salve. Works*, ed. 1765, I, p. 186.

trust we know nothing at all. 'They that come and tell you what to believe, what you are to do, and tell you not why, they are not physicians, but leeches.'[1] Even if teachers blindly followed happen to be right, 'yet if you know not so much, you are not yet excused. . . . There is no other means not to be deceived but to know things yourselves.'[2] And you must be cautious, remembering that 'the chiefest sinew and strength of wisdom is not easily to believe'. It is of no use to try to excuse your unreason by appealing to antiquity. 'Those things which we reverence for antiquity, what were they at their first birth? Were they false? Time cannot make them more true. The circumstance of time . . . is merely impertinent.'[3] Still more absurd is it to say that you believe this or that because you were so taught as a child. 'Nothing is more credulous than a child': it behoves us all, therefore, critically to examine all that we were taught as children. And yet, he added, 'if the best and strongest ground of most men's religion were opened, it would appear to be nothing else.'[4]

It does not matter who it is that demands that you accept his conclusions. Whether it be an authorized teacher or a church, council or synod, the case is still the same. In his treatise on schism, Hales spoke of men peremptorily concluding and imposing their conclusions on others, 'upon pretence of Church authority, which is none, or tradition, which for the most part is but figment'.[5] Called to account for this by Laud, he wrote the Archbishop a beautiful letter in which he retracted nothing. He admitted, indeed, that the words 'which is none' were hasty and not strictly accurate; because ecclesiastical courts in ecclesiastical causes 'have the same authority as any others have, to whom power of jurisdiction' is committed. But he held to it that Church authority is none, when it comes to deciding doctrinal controversies; which is all he had meant to say. As to whether bishops had any claim to authority *jure divino*, 'I am very well content', he wrote, 'to put off the decision of this point till Elias come.'[6] All that he seriously apologized for were excellencies of his own style, with its 'things over familiar and subrustic . . .

[1] *Of Enquiry and Private Judgment in Religion.* *Works*, III, p. 150.
[2] Ibid., p. 152. [3] Ibid., p. 163. [4] Ibid., pp. 162–3.
[5] *A Tract concerning Schisme and Schismaticks.* *Works*, I, p. 125.
[6] 'A Letter to Archbishop Laud.' *Works*, I, p. 141.

things more pleasant than needed . . . sour and satirical'. There had been nothing sour.

Hales was, however, well aware that the claims made for synods or convocations were too serious not to be taken seriously. He argued at some length not only that such bodies may err, but that 'it were great marvel if they did not err'. For they tend to be composed of the pushful and highly placed rather than men of learning and good judgement.[1] Then, too, he pointed out, their method of coming to a decision is by vote of a majority. 'It was never heard in any profession', he dryly remarked, 'that conclusion of truth went by plurality of voices, the Christian profession only excepted.'[2] He will not deny, he says, that such councils are divinely assisted; he will not deny that God's assistance is given to the whole world. But there is no assurance that the assistance given is such as to make a right judgement certain.[3] There is no reason to believe that the determinations come to are actually inspired by the Holy Spirit. 'Experience shows that the pretence of the Spirit in this sense is very dangerous . . . which is a thing sufficiently seen and acknowledged both by the Papist and Protestant party, as it appears by this, though both pretend unto it, yet both upbraid each other with the pretence of it.'[4]

Nor did Hales shrink from the consequences of these assertions. 'Heresy and schism', he wrote, 'as they are in common use, are two theological Mormos or scarecrows, which they who uphold a party in religion use.'[5] He came to the conclusion that the only kinds of inexcusable schism are those that turn on trivialities and those that spring from vulgar ambition or self-importance. As for heresy, 'it is an act of the will, not of reason, and is indeed a lie, not a mistake'.[6] No mere mistaken conclusion, he declared, honestly come to, can possibly be heresy. Clarendon tells us that Hales 'would often say that he would renounce the religion of the Church of England to-morrow, if it obliged him to believe that any other Chirstian should be damned' for believing wrongly.

There was, Hales thought, far too much controversy about religion. Every one rushed in where all should fear to tread.

[1] *On the Sacrament of the Lord's Supper and concerning the Church's mistaking itself about fundamentals. Works*, I, p. 65.
[2] Ibid., p. 66. [3] Ibid., pp. 67–8. [4] Ibid., p. 69.
[5] *Tract concerning Schism. Works*, I, p. 114. [6] Ibid., p. 126.

'With all this labour and stir there is nothing done.'[1] The books of the learned by 'ambitiously heaping up the conceits and authorities of other men, increase much in the bulk, but do as much imbase in true value'.[2] What makes the matter much worse is the spiteful and malevolent violence of our controversialists. Their passionate denunciations of each other do but exhibit the evil in themselves.[3] 'The strength of passion is the weakness of the passionate.' Our books are 'stuffed with contumelious maledictions'. 'A hard thing I know it is, to write without affection and passion in those things which we love. . . . But for those who have not the command of themselves, better it were they laid it by.'[4]

'It is not', he wrote, 'the variety of opinions but our own perverse wills, who think it meet that all should be conceited as ourselves are, which hath so inconvenienced the Church. Were we not so ready to anathematize each other where we concur not in opinion, we might in hearts be united though in our tongues we were divided, and that with singular profit to all sides. It is the unity of the Spirit in the bond of peace, not identity of conceit, which the Holy Ghost requires at the hands of Christians.'[5]

'Since', he went on, 'it is impossible, where Scripture is ambiguous, that all conceits should run alike, it remains that we seek out a way, not so much to establish an unity of opinion in the minds of all, which I take to be a thing likewise impossible, as to provide that multiplicity of conceit trouble not the Church's peace. A better way my conceit cannot reach unto than that we would be willing to think that these things which, with some show of probability, we deduce from Scripture are at the best but our opinions. For this peremptory manner of setting down our own conclusions under this high commanding form of necessary truths, is generally one of the greatest causes which keeps the churches this day so far asunder.'[6] Hales made it clear elsewhere that he accepted all the implications of this crucial passage. 'I do not yet see,' he says, 'that men of different opinions in Christian religion may not hold communion *in sacris* and both go to one church.'[7] He proceeded to make a suggestion that he might have found in More's *Utopia*.

[1] *Of Dealing with erring Christians*. *Works*, II, p. 66. [2] Ibid., p. 67.
[3] Ibid., p. 81. [4] Ibid., pp. 92–3. [5] Ibid., p. 94. [6] Ibid., pp. 95–6.
[7] *Tract concerning Schism*, I, p. 126.

'Consider of all the liturgies that are or ever have been and remove from them whatsoever is scandalous to any party and leave nothing but what all agree on; and the event shall be that the public service and honour of God shall no ways suffer; whereas to load our public forms with the private fancies upon which we differ, is the most sovereign way to perpetuate schism unto the world's end. Prayer, confession, thanksgiving, reading of Scriptures, exposition of scripture, administration of sacraments in the plainest and simplest manner, were matter enough to furnish out a sufficient liturgy, though nothing either of private opinion or of church pomp, of garments, of prescribed gestures, of imagery, of music, of matter concerning the dead, of many superfluities, which creep into the churches under the name of order and decency, did interpose itself.'[1] The suggestion would have displeased Laud and the Calvinists alike.

But Hales went farther yet. We may be weaker or stronger in faith and in knowledge, but there is really little difference. 'Some peradventure are less weak than others but no man is strong.'[2] We have no right simply to denounce. 'There is no kind of man . . . though he be an heathen and idolater, unto whom the skirts of Christian compassion do not reach.'[3] There is a kind of man 'who hath but small or, peradventure, no knowledge at all in the mystery of Christ, yet is, otherwise, a man of upright life and conversation, such a one as we usually name a moral man'.[4] He may be simply an unbeliever and, in any case, practically he is one, Such men, Hales declared, if not actually Christians are at least their near kinsmen. 'Suppose that as yet they be not of, yet certainly far from the kingdom of Heaven they cannot be.'[5] 'Two parts there are that do completely make up a Christian man, a true faith and an honest conversation. The first, though it seem the worthier and therefore gives unto us the name of Christians, yet the second, in the end, will prove the surer.'[6]

One has only to read Hales to see, if one did not see before, how inadequate are all such arguments as that of Busher. All the necessary admissions are made, though to Hales they were not 'admissions'. If he were right what ground remained for

[1] *Tract concerning Schism. Works*, I, p. 127.
[2] *Of Dealing with Erring Christians*, II, p. 85.
[3] Ibid., II, p. 60.
[4] Ibid., p. 69.
[5] Ibid., p. 70.
[6] Ibid., I, p. 69.

intolerance in religion? It could be defended only on grounds of temporary expediency or sheer necessity. Hales did not ask what a government is to do that has to deal with rival, intolerant, religious parties. The answer to that question could only depend on circumstances. He was not concerned with politics or, directly, with law. Like Sandys before him and like Chillingworth, he was arguing not against the intolerance of governments, but against the intolerance of sects. In so doing he was going to the very root of the evil.

Chapter VII

WILLIAM CHILLINGWORTH

As an advocate of toleration Chillingworth seems to be far more famed than is Hales. That is probably due simply to his having concluded fairly definitely in favour of toleration by law. His view in general might have been derived from Hooker. Hooker had said that we should not wish men to do anything 'which in their hearts they are persuaded they ought not to do'. He had said, too, that no one could reasonably be required to yield assent to anything on insufficient evidence. Chillingworth's views might be regarded as an expansion of these suggestions. He may also have been influenced by Arminian writings: a good deal of what he says closely repeats Castellion. The direct influence of Hales, whom he met frequently at Great Tew and who was his elder by nearly twenty years, may well have been still more effective with him. But though the two almost completely agreed, Hales perhaps went the farther.

Born in 1602, Chillingworth became a Fellow of his Oxford college, Trinity, in 1628. He took a vigorous part in the religious controversies that then agitated the University. 'He would always be disputing', says Aubrey. 'I have heard Mr. Thomas Hobbes say', he added, 'that he was like a lusty fighting fellow that did drive his enemies before him, but would often give his own party smart back blows.'[1] This points, perhaps, to unsettled opinions: in any case, he became a Catholic in 1630 and actually went to Douai. But he was back again next year, and by 1634, at latest, had again become a Protestant. In the years that followed he spent much of his time with Falkland at Great Tew, where, according to Clarendon, he wrote the whole of his *Religion of Protestants*. This, his only work of real importance, was begun in 1636 and published in 1637, after some little trouble with Archbishop Laud.[2] It was

[1] *Brief Loves*, ed. Clark, I, p. 173.

[2] *The Religion of Protestants a Safe Way to Salvation*. There was a second edition within six months, another in 1664 and still others before the end of the century. Chillingworth's complete works were published in 1742 and again, at Oxford, in 1838. A separate edition of *The Religion of Protestants* was published in 1846.

fiercely attacked; and Chillingworth was ridiculously denounced as a Socinian and even as an atheist. There is, indeed, some reason to think that his opinions were never very settled. He had, says Clarendon, who ought to have known him well, 'contracted such a habit of doubting that by degrees he grew confident of nothing and a sceptic, at least, in the greatest mysteries of religion'. We know that he strongly objected to the damnatory clauses of the Athanasian creed.

Finding difficulty in subscribing to the Prayer Book and Articles, he was slow and late in taking preferment in the Church; but his scruples were finally overcome. He joined the King at the outbreak of the Civil War and preached at headquarters of 'seeing publicans and sinners on the one side against scribes and pharisees on the other'.[1] Unfortunately in 1644, being already a sick man, he fell into the hands of the pharisees. Dying a little later, his last days were disturbed by the exhortations of a Puritan minister named Cheynell. One may be permitted to hope that by these ministrations he was more bored than distressed.

In 1630 a Jesuit, whose name appears to have been Matthew Wilson but whose *nom de plume* was Edward Knott, published a tract entitled *Charity Mistaken*, in which he maintained that, unless in exceptional circumstances, salvation was impossible for Protestants. In anticipation of a reply from Chillingworth he followed this up, in 1634, with a tract called *Mercy and Truth, or Charity Maintained*. 'Protestantism', Knott wrote, 'waxeth weary of itself. The professors of it, they especially of greater worth, learning and authority, love temper and moderation, and are at this time more unresolved where to fasten than at the infancy of their Church.' Calvinism, he declared, has begun to be 'accounted heresy and little less than treason'. He pointed out that Protestants now spoke of priests and altars, prayed for the dead and denied that the Pope is anti-Christ. Chillingworth's *Religion of Protestants* was written as an answer to Knott.

If Chillingworth loved disputation, as Hales did not, it was probably because he was so well equipped for that form of amusement. He was essentially a reasoner; exceptionally lucid and logical, if a little unimaginative. 'I am certain', he

[1] Sermon preached before the King at Oxford, 1644.

wrote, 'that God has given us our reason to discern between truth and falsehood; and he that makes not this use of it, but believes things he knows not why, I say that it is by chance that he believes the truth . . . and that I cannot but fear that God will not accept the sacrifice of fools.'[1]

This is precisely the standpoint of Hales. He had insisted on the folly of clinging unquestioningly to what one was taught as a child. Chillingworth pointed out that, unless we do so, the exercise of our private and personal judgement becomes unavoidable. Every man, he says, addressing Knott, must needs choose 'either his religion first and then his church, as we say, or, as you say, his church first and then his religion. But by the consent of both sides, every man is to judge.'[2] 'You that would not have men follow their reason, what would you have them follow? . . . Your church you admit because you think you have reason to do so, so that, by you as well as by Protestants, all is finally resolved into your own reason.'[3]

Scripture, Chillingworth declared, is 'the only rule whereby to judge of controversies'. It is sufficiently perfect and sufficiently intelligible to all that have understanding, 'whether they be learned or unlearned. . . . Nothing is necessary to be believed but what is plainly revealed.' Where any reasonable doubt is possible, to say 'that God obliges man under pain of damnation, not to mistake, through error and human frailty, is to make God a tyrant. . . . Certainly I for my part fear I should not love God, if I should think so strangely of Him.'[4] On this crucial point he agreed absolutely with Hales and expressed his views emphatically in several places. 'It is sufficient', he says, 'for any man's salvation, to believe that the Scripture is true and contains all things necessary for salvation and to do his best endeavour to find and believe the true sense of it.'[5]

With a certain indirectness, but far more definitely than did Hales, Chillingworth concluded for toleration by law. 'Human violence may make men counterfeit, but cannot make them believe, and is therefore fit for nothing but to breed form without and atheism within.' It was often absurdly given as a reason for toleration that persecution in a Protestant State encouraged

[1] *The Religion of Protestants*, ed. 1846, p. 133. [2] Ibid., p. 95.
[3] Ibid., p. 134. [4] Ibid., pp. 129–130. [5] Ibid., p. 179.

Catholic governments to persecute. Chillingworth put the matter reasonably. If it be admitted that a government, under the impression that it knows the truth, may justly compel formal acceptance of it, it follows that while true religion may be maintained in one country what is maintained in others will certainly be false.[1] But if, he argued, such compulsion be unjust, then no good can come of it anywhere. 'They that know there is a King of kings . . . they know that to no king or state anything can be profitable which is unjust.' On the other hand, 'there is no danger to any state from any man's opinion, unless it be such an opinion by which disobedience to authority, or impiety, is taught or licensed . . . or unless this sanguinary doctrine be joined with it, that it is lawful for him by human violence to enforce others to it'.[2] Hales might well have said at least as much, though he did not do so.

Where, if anywhere, Chillingworth differs from Hales is in his emphatic insistence on the verbal inspiration of Scripture. Reason itself, he declared, must always be subordinated to the consideration that 'God hath said so, therefore it is true'. It seems that, to him, it is only differences of opinion on what is not 'evidently' revealed, that do not matter. It seems implied that differences on essential points are either impossible or will matter very much. There remains a certain doubt, therefore, as to how far Chillingworth's toleration would practically have extended. Possibly it would not have extended, as that of Hales did, to the unbelieving but 'moral' man. Yet in one place Chillingworth avows the opinion that 'it is possible that they which never heard of Christ may seek God; therefore it is true that even they shall please Him, who is a rewarder of them that seek Him'.[3] It is not clear that as between Hales and Chillingworth there was any difference of view. It was the fact that his book was directly concerned with Romanist views, that led Chillingworth so emphatically to insist that 'the Bible only is the religion of Protestants'.[4]

[1] *The Religion of Protestants*, p. 371. [2] Ibid., pp. 371–2. [3] Ibid., p. 178. [4] Ibid., p. 463.

Chapter VIII

GREAT TEW

THE writings of Hales and Chillingworth are evidence of the development of a point of view far more advanced along the line of intellectual progress than anything to be found among Puritans or even in the Laudian party. That, however, does not imply that there were not already many people who shared it. It was probably shared by all the members of Falkland's 'philosophical' circle at Great Tew. Nor must it be forgotten that Benjamin Whichcote began his Sunday lectures at Cambridge as early as 1637. The work of that great man, however, belongs mainly to a rather later period.

Lucius Cary, who became Viscount Falkland in 1633, made of his house at Great Tew a centre of the highest civilization. The earlier gatherings there consisted chiefly of men of letters, and included Ben Jonson, Suckling, Carew and Waller. Later, when the host became, as Suckling lamented, 'gone with religion', the 'sessions of the poets' became a *convivium philosophicum* or *theologicum*. It was a gathering of highly cultivated men of broad views, tolerant and without any kind of fanaticism, religious or political. There were among them the saintly Henry Hammond and John Earle of the *Microcosmographie*, who said that he learned more at Great Tew than ever he did at Oxford. There was George Morley,[1] scholar and wit, who, when some one asked him what it was that the 'Arminians held', retorted promptly: 'All the best bishoprics and deaneries in England.' There was Gilbert Sheldon who, under Charles II, became a much abused Archbishop of Canterbury and gave the Sheldonian to Oxford. He was a man who cared little for forms of worship or for theology and it was said of him that he placed the chief point of religion in the practice of a good life.[2] There was, of course, Edward Hyde, the future great statesman, whose friendship with Falkland was perhaps the most beautiful thing in his life.

[1] Morley became Bishop of Winchester in 1662. John Earle became Dean of Westminster at the Restoration and subsequently Bishop of Salisbury.

[2] See J. A. R. Marriott's admirable *Life and Times of Lucius Cary*, 1907.

Above all there were Hales and Chillingworth. Hobbes was not among them nor Herbert of Cherbury, and indeed they would have been out of place there.

Falkland himself, though his later speeches in Parliament concerning the Laudian bishops showed prejudice and no understanding, shared generally the views of his friends. In a *Discourse* written about the time when Hales was writing his *Tract on Schism*, he argued to the effect that men have no need of any infallible guide on the way to salvation. To those 'who follow their reason in the interpretation of the Scriptures, God will either give his grace for assistance to find the truth or his pardon if they miss it'.[1] He who so tries and misses should, he declared, be at least in as good case as he who simply accepts what a Church tells him. 'I cannot see why he should be saved because, by reason of his parents' belief or the religion of the country or some such accident, the truth was offered to his understanding, when, had the contrary been offered, he would have received that.'[2] Readiness to curse and cry 'to the fire with him', is one of the worst features of the Church of Rome. The Church of England, he added, has sinned also a little in this way, 'which is a little too much'.

The wits and amateurs of letters who gathered round Falkland at Great Tew are likely to have been even more widely tolerant than the members of his *convivium philosophicum*. Indifference to religious disputation has certainly been, practically, an important factor in bringing about legal toleration in respect of religion. Not indeed that all these men of the world were merely indifferent. That highly accomplished person, Sir John Suckling, card-player and champion at bowls, occasional playwright and author of the exquisite *Ballad of a Wedding*, said of himself that he 'prized black eyes or a lucky hit at bowls above all the trophies of wit'. Nevertheless, probably under the influence of his friend Hales, he wrote, about 1637, an essay entitled 'An Account of Religion by Reason'.[3] There is, indeed, nothing in this essay that might not have come straight from Hales or from Herbert of Cherbury. Signs of the influence of the latter are few and precious,

[1] *Discourse of the Infallibility of the Church of Rome.* This was not published till 1651.
[2] *Discourse*, p. 15.
[3] Published in *Fragmenta Aurea*, 1646; which also included the first collection of his poems. Suckling's early death, a serious loss to literature, occurred in 1642.

but it seems here at least probable. The essay is interesting also as expressing the point of view of an uncommonly gifted man of the 'fashionable' world of the day.

Suckling began by remarking that one who sets out to give an account of religion by reason is likely to be suspected of having no religion. But he will take the risk, 'not knowing why a man should not use the best weapon his Creator hath given him'. He went on to declare that in the great days of Greece and Rome, men already held 'directly or indirectly . . . a great part of our religion'. They had roughly the same moral standards and the same belief in rewards and punishments in a future life. The idea, too, of a God, final cause and disposer of all things and the giver of those rewards and punishments, is, he averred, common to humanity in general. But so great has been the diversity of men's opinions on other points that some have thought 'that God was no less delighted with variety in his service than he was pleased with it in his works'. When Christianity came into the world, he says, the Apostles were no doubt right in insisting on the need of faith, since 'few among thousands are capable of reason'. Yet, 'had the Fathers of the Church only bid men believe and not told them why, they had slept now unsainted in their graves'. Finally, after a rather perfunctory attempt to defend by reason the mysteries of the faith, he declined to take upon himself to decide among the many different forms of Christianity.

Was Suckling far wrong in lamenting that Falkland came to be 'gone with Divinity'? He and his like would be ready light-heartedly to acquiesce in toleration even though they might take no active steps to further it. But in the long run their attitude was likely to be more practically effective than any argument. It may be remarked also, that Suckling and Edmund Waller were far more likely to become members of Parliament than a man like Chillingworth. It is true that such men would, probably, be equally ready, in the interests of their political party, to impose on nonconformists disabilities designed to make them politically powerless. That fact helps to explain the very limited character of the toleration established under William III. Intelligent indifference, too, is probably always accompanied by a certain amount of scepticism; and the scepticism that resulted from reflection, even

though it cut both ways, was certainly one of the factors that made for toleration. Its development had, at least, a very direct bearing on the practical question.

Many different degrees of scepticism in relation to current Christian beliefs, seem to have existed in Charles I's time. The most common was probably that which is pictured in Earle's *Microcosmographie*. Earle's sceptic does not doubt that a divine revelation has been given in the Scriptures: he only doubts what it all means. He is described as 'one that hangs on the balance with all sorts of opinions', and 'finds reason in all opinions and truth in none'. He is troubled by the fact that if you are born in England you generally become a Protestant, while if in Spain or France you become a Papist. He is troubled also by the fact that honest and learned men differ so widely. Among the conflicting claims of so many sects and systems, he feels it impossible to decide. 'His whole life', Earle concludes, 'is a question and his salvation a greater.' A certain amount of scepticism of this type was, I imagine, inevitably a product of the unending controversies of the last hundred years.

Doubt of the validity of any and every interpretation of the Scriptures, will pass easily into doubt whether the Scriptures contain any revelation. Once that step is taken, a further step is sure, sooner or later, to follow. Between doubt and denial there is, indeed, a gulf, yet it is also true that doubt tends to become denial. A scepticism that does not rest on a theory of knowledge and refers only to particular beliefs or systems, easily passes into dogmatism. In one mind at least, before the end of James I's reign, scepticism had come very near to dogmatic denial of the validity of Christian religion.

Chapter IX

LORD HERBERT OF CHERBURY

To the general reader Herbert of Cherbury is known chiefly as the author of the entertaining autobiography that he wrote in the closing years of his life and never finished. No one could gather from that work that its author was a metaphysician and a thinker of remarkable courage, power and originality. His account of himself gives no glimpse of the history of his thought and, except for a passage towards the end, hardly suggests that he paused to reflect upon anything. He exhibits a strong personal vanity and a strong desire to convince posterity of his high distinction and admirable feats. But it was not on his intellectual adventures and achievements that Lord Herbert would seem to have looked back with pride. What he prided himself on was his sword-play, his horsemanship, his reckless and absurd gallantry and his social and amatory successes. Perhaps the most original of his views was that he took of himself.

An eldest son in a younger branch of a great family, Edward Herbert, born in 1583, travelled in Italy and in 1619 became James I's ambassador in Paris, where he absurdly challenged Luynes to a duel and had to be recalled. On the death of Luynes in 1622, he returned to his post in Paris, but was again recalled in 1624. There his public career ended, though he pleaded in vain for employment and was given an English peerage in 1629. He has been severely handled by biographers and accused of self-seeking, for refusing to take part in the Civil War. It would, however, be, at the least, very difficult to show that it was in any sense his duty to take a side; and it is fairly obvious that a neutrality which displeases both parties was not a road to fortune. Actually it led to ruin, though subsequent submission to the victors procured him a compensating pension, in receipt of which he died in 1648. At one time or another he had friendly relations with John Donne, Ben Jonson, Selden, Carew, Casaubon, Grotius and Gassendi. But of these, his friends of real distinction, he makes little or no mention in his autobiography.

Lord Herbert's *De Veritate*,[1] the book in which he expounded his philosophy, was, according to his own statement, 'formed in all its principal parts' in England, probably in the years 1617 to 1619. It was completed and published at Paris in 1624. Later this work was supplemented by the *De Causis Errorum*, published in 1645, and the *De Religione Gentilium*, which was finished in 1645 but not printed till 1663.[2]

We are not here concerned with Herbert's metaphysics and theory of knowledge. But it must at once be pointed out that his philosophy altogether ignored the Scriptures as a source of knowledge. It was entirely independent of, and indeed quite unconnected with, the Bible. He contemptuously denied the claims of the Churches to make authoritative and binding pronouncements. Every one will have to answer for himself before the final Judge; and it will be useless to plead that we acted by authority.[3] Evil, he asserted, is the result, not of the activities of a devil, but of man's own free will. He destructively criticized the story of the Fall and declared that the idea that God arbitrarily dooms men to damnation is inconsistent with any rational conception of the Creator.[4] He did not directly attack Christianity as a revealed religion. But when, in the *De Religione Gentilium*, he represents the 'natural religion' of the ancient world as having been overlaid with superstition and reduced to rubbish by poets and philosophers and, above all, by priests,[5] it is not possible to suppose that he was thinking only of paganism.

What Herbert expounded was a philosophic deism which he regarded as a 'natural' religion, based on the common intuitions of mankind resulting in a universal assent. This universal assent he held to be the criterion of what is true. Though he did not here refer to Hooker, he might well have done so. What has been universally believed, he declares, can be made out by examination and comparison of the laws, philosophies and religions of the past. When what we have found to have been universally believed is corroborated by our own intuitions, we have found the truth or all that can be known

[1] *De Veritate, prout distinguitur a revelatione, a verisimile, a possibili et a falso.* It was published for the first time in England in 1633. A French translation appeared in 1639; but there has been none into English.

[2] An English translation of the *De Religione Gentilium* appeared in 1705.

[3] Concluding section of the *De Veritate.*

[4] *De Religione Gentilium*, ch. XIII.

[5] Ibid., ch. XV.

of it. Herbert has been called the Father of Deism and, though he had forerunners,[1] his writings certainly laid down the main lines of the deistic philosophy that was developed in the late seventeenth and early eighteenth century, by Charles Blount, John Toland, William Woolaston and the third Earl of Shaftesbury.[2]

That there is one supreme God; that he should be worshipped; that worship essentially consists in pious and virtuous living; that men should repent of and reform their misdoings; and that the law of the universe involves rewards and punishments here on earth and in a life hereafter;—these are the five articles of the creed of natural religion as conceived by Herbert. All five remained fundamental in the teaching of his continuators of the seventeenth and eighteenth centuries. Mr. Basil Willey has suggested that Herbert's work may be regarded as arising from a desire to find 'principles of comprehension', naturally generated by perpetual controversy and disturbance about religion. What he found was a simplification of current religious beliefs that would have seemed to some to retain, and to others to leave out, all that was essential in religion. It would be impossible, he declared, to add anything of real value to his five great articles. But it was certainly a simplification in which all that was distinctively Christian disappeared.

'If more be required', says Herbert, 'to complete the religious worship of God than what is contained in the forementioned Five Articles, the Priests of the former and present ages will tenaciously affirm that it is contained in some Oracle delivered by divine inspiration or commanded by the Word of God.' He proceeded to suggest that no such oracle or word exists. It has yet to be proved that God has ever actually spoken to men, and proof is equally required that the word spoken was accurately reported. These things must be proved 'beyond all contradiction'. Even then, before belief in doctrines derived from the oracle can rationally be insisted on, their practical importance for man's life should be demonstrated. 'When the priests have performed this', he contemptuously concluded, 'the Lay Heathen will readily submit to their injunctions.'[3]

[1] For instance, Jean Bodin in his latest phase.

[2] Blount's *Anima Mundi* appeared in 1679 and his book on *Apollonius of Tyana* in 1680. He went beyond Herbert in systematically criticizing Christianity as revelation.

[3] This passage forms the close of Chap. XV of the *De Religione Gentilium*. I have quoted from the translation of 1705 by William Lewis, pp. 365–6.

Herbert was, perhaps, too isolated to have very much influence on contemporary thought. But his influence, if exercised upon few, was far-reaching. The *De Veritate* went through several editions in England and, before 1660, was criticized by Nathaniel Culverwell and by Richard Baxter. That the later deists derived primarily from him is clear; and his thought has links with that of Hobbes and of Descartes, and even with that of the Cambridge Platonists. In any case, the fact of the promulgation of such views as his before 1625 is one of high significance. There is, it is true, no warrant for regarding the development of non-Christian philosophies as of itself a mark of intellectual progress. But it was a step towards intellectual freedom. Herbert's influence, just so far as it extended, must have helped to undermine the assurances and the assumptions on which religious intolerance could logically be based.

From different angles and from several quarters the intellectual obstacles to toleration were being attacked or undermined in the period from 1603 to 1640. But how little effect was produced was shown by the furious intolerance of the attack on the Church and the Laudian bishops in 1641. The classes represented by the House of Commons seem, in general, to have been completely unaffected. The mass of the Puritans remained more or less violently intolerant; the mass of the people, so far as not merely ignorant or indifferent, were hostile. It was only by small and oppressed groups and by a few highly gifted individuals that toleration was advocated, directly or indirectly. The question in 1640 was not yet one of practical politics. The government had not begun to consider it; the governing classes were hostile or indifferent. The general hatred and fear of Roman Catholicism was perhaps the greatest of all practical obstacles; and nothing effective had been done to mitigate it. Not only did it make a real toleration of Catholicism altogether impossible, but it set the governing classes and the House of Commons against any toleration of dissent. Developing scepticism counted at least as much one way as the other; and mere indifference was powerless in the clash of intolerant parties.

PART IV
PURITANISM

Chapter I

THE WORD 'PURITAN'

I HAVE been able, so far, to make use of the word Puritanism in a superficial and restricted sense which is quite explicit. I have used it merely as a conveniently short way of referring at once to Presbyterians and Congregationalists, the spiritual descendants of Cartwright and Travers on the one hand, and of Browne and Barrow on the other. So used, it signifies groups of people who believed that there was to be found in Scripture a divinely ordained form of church organization which was not that of the Church of England. They did not necessarily agree on any other point. But they held that the Church of England was unreformed or insufficiently reformed or that it was not a true church at all. And both endeavoured, or at least hoped, to establish their system on the overthrow of the other.

But, at least of the period after 1640, the terms Puritan and Puritanism are used by most modern writers, not only in a sense that seems to be more widely inclusive, but with an implication of an agreement among Puritans far more fundamental. It seems useless to proceed further without attempting to arrive at an approximate definition of the nature of Puritanism.

It is agreed that, in the seventeenth century, there existed a number of people sufficiently similar in some distinctive respects, to be given the distinctive name, Puritans. Puritanism must be the character, the quality or peculiarity, which distinguished them from their contemporaries. It is that in which all Puritans are united. But, evidently, we must have a definite notion of what constituted Puritanism before we can say whether So-and-so was a Puritan or not. Exact definition may be, and no doubt is, impossible; but at least we must arrive at such a degree of definition as will enable us to distinguish. If that degree cannot be attained, the Puritan cannot be distinguished from other people; and we are saddled with one more useless and meaningless word.

It is with some reluctance and much misgiving that I enter

upon this difficult inquiry. I confess that for many years I felt no doubt that I understood what was meant by Puritanism. Closer study of the thought of the seventeenth century convinced me that all I possessed was an impression radically vague. That impression did not seem to be derived from any sort of acquaintance with actual people of that time. It seemed, rather, to be born of imagination working on modern writings. There came a time when I was inclined to think that I could use the word only in some artificially restricted sense. But, if it do not refer to something real and distinct, some system of opinion, some distinctive attitude, moral or intellectual, or some distinctive type of mentality, for which there is no other word, what good excuse is there for using it at all? If it be merely a matter of religious sects or parties we have names enough. We can readily distinguish between true Presbyterians, like Robert Baillie, and Erastian Presbyterians, like Prynne, and between Congregationalists and any kind of Presbyterian; we can distinguish between Baptists and others, and between different types of Baptist; we can distinguish Fifth Monarchy men and Quakers and even Seekers. I am not suggesting that all these widely differing people were Puritans in any possible sense; though language is sometimes used that suggests they were. Superficially, at least, they would seem to have agreed upon nothing but a few negatives and they were, more or less violently, antagonistic. But if we can find no positive bond or unifying character among some, at least, of them, the word Puritan becomes unnecessary. In that case to lump all or some of these groups together under one label, might, possibly, be occasionally convenient but might easily mislead. It would be, at best, a thoroughly unscientific classification. Generally speaking, if a word can be done without, it should be; unless there is no possible doubt about its implications.

Many writers have generalized freely about Puritanism and told us that the Puritans did this or were like that or thought the other. All of them, presumably, must have felt the need of explanation. Unfortunately, the explanations given do not agree together and sometimes leave everything as vague as before.

There have been some who would restrict the use of the

term to those who believed in the divine ordainment of a Presbyterian form of church organization. In that sense the term is simply superfluous. Others will have it that all Protestants who believed, exclusively, in any form of church which was not that of the Church of England, were Puritans. That definition includes the Congregationalists, but is evidently superficial. A learned writer has assured us that Puritanism was a 'spiritual perception', which, at different times, expressed itself in aversion to ritual, in Sabbatarianism, in a rigid Calvinist orthodoxy and in a demand for stricter morality of life. Here is, at least, an attempt to get behind forms. But a perception, spiritual or not, must be a perception of something. What is that which, perceived, can be expressed in these diverse modes? The question has to be answered before we can know what the writer means.

It has been suggested that what essentially characterizes Puritanism is a conception of religion as necessarily and intensely personal. Puritanism, it is said, involved an effort to establish and maintain a personal and direct relation between the individual and the God of his worship. It was characterized, therefore, by a constant sense of the presence of God and a steady effort to act in accordance with His will. But, if anything can be thus defined, it is surely not Puritanism but rather religion itself. That such personal relation to, and communion with, the divine exists, or should exist, is implied in all Christian doctrine that relates to the life of man, and in all forms of Christian worship, ritualistic or other. It would be no less than absurd to imagine that the religious consciousness of any of the people called Puritans was more spiritual, personal or intense than it was in George Herbert or Nicholas Ferrar or Richard Crashaw or St. John of the Cross. If, indeed, these people were Puritans, the objection falls. But, in that case, we shall find little use for the word.

A satisfactory definition of Puritanism would present it as a type of temperament and mentality, or as a distinctive outlook on life, or as a distinctive set of values, or, indeed, as all these. Quite unsatisfying, because really unintelligible, would be a definition which represented it as an assemblage of traits in unexplained correlation. But even the most superficial survey of the facts is enough to show that it cannot be

defined as a set of opinions upon any one subject. Equally clear is it that Puritanism must be distinguished, broadly, if not absolutely, from mere anti-clericalism. The word has, indeed, sometimes been used of people who merely feared or resented any sort of clerical claim to authoritative determination. But if that be sufficient to constitute Puritanism we must reckon as Puritans Falkland and Selden, Henry Martin and Herbert of Cherbury. At the commencement of the Civil War there seems to have been as much anti-clericalism on the Royalist side as on the other. There might have been even more, but for the fact that there were few real Presbyterians among the Parliamentarians. Strict Presbyterianism was clerical in the extreme. 'Presbyters', said Selden, 'have the greatest power of any clergy in the world and gull the laity most. Lay elders are stakes: the Presbyter the tree that flourishes.'[1] Had the divines of the Westminster Assembly had their way, England would have been subjected to a clerical domination, far more oppressive and reactionary than anything contemplated by Laud.

We meet, sometimes, with pen and ink sketches of the ideal Puritan. I confess that in this personage, however exactly presented, I feel little interest. If you abstract from a large number of people a trait here and a trait there, the combined result is likely to be a figure that corresponds to nothing that ever existed. It is the traits common to all Puritans that have to be ascertained. The ideal Puritan looks to me like a figure of fiction. It is the actual Puritans of the seventeenth century that we have to study, and to do so we must go to contemporary literature. However much difference of opinion there may be about the nature of Puritanism, there is sufficient agreement to make discussion possible. Approximately, we know who those were who by general agreement are called Puritans. Did there exist throughout or within this body, in spite of differing opinions in religion or in politics, a distinctive and intelligible correlation of common traits or a distinctive outlook on life?

Any tolerable answer to this question must needs be somewhat complex and cannot be exclusive of degrees. There can be no absolutely sharp edge; there must have been degrees of

[1] *Table Talk*, ed. S. H. Reynolds, 1892. No. 115.

Puritanism, as of all things human. But the ideal method of approach to the problem seems plainly indicated. Some light may be thrown upon the question by the contemporary use of the term Puritan; but that, assuredly, will not get us far. More illumination should come from expressions of contemporary experience of people called Puritans. Then, if every kind of so-called Puritan writings were analysed and all such individual Puritans as have clearly revealed themselves and their opinions were closely examined, we should have material for an answer to our question. The results of such an exhaustive inquiry could be adequately set forth only in a book by no means small. That book should, perhaps, be written, but I am not writing it. It might be highly entertaining and it might also be highly inconclusive. It might leave us able only to say, with Mr. Tatham,[1] that the word Puritanism 'was and is used to describe tendencies of thought superficially alike but really distinct', and, it might be added, divergent.

But the most I can do here to supplement preliminary inquiries is to single out a few prominent individuals, of different types but universally regarded as Puritans, and call them as witnesses. Such procedure is unsatisfactory in more than one way. Conclusions arrived at on such evidence will have too narrow a base. Not only so, but there is a danger that the selection of witnesses will be radically fallacious. It might prove that only such types had been selected as would support opinions already formed. No one can be certain of not falling into the traps our nature sets for us. Yet, though the conclusions I have actually arrived at, may probably need enlargement or amendment, I think they are unlikely to be altogether wrong. In any case, I shall have given, what I am bound to give, an explanation of what I mean when I speak of Puritans. In any case, too, the attempt should be made.

[1] *The Puritans in Power*, 1913.

Chapter II

THE CONTEMPORARY USE OF 'PURITAN'

So little help towards an answer to our question is given by the contemporary use of the word Puritan, that it seems doubtful whether it is worth while to say anything about it. Yet some significance perhaps attaches to that use. Originally, under Elizabeth, the word Puritan seems to have been used merely as a term of reproach or contempt. It probably signified, at first, a person regarded as making a ridiculous fuss about trifles. A little later, when these 'precisians' developed the assertion that episcopacy was positively disallowed by God's word, the term became one of more serious reprobation. Every one then knew to whom it applied. It was applied to the Presbyterians, followers of Cartwright and Travers. It might, perhaps, be used also of Congregationalist separatists. In 1606, Parsons, the Jesuit, declared that the Puritans differed more from orthodox Protestants of Elizabethan and Erastian type than the latter did from Catholics.[1] If Marchamont Nedham were right in saying that, in 1647, the Presbyterians 'reckon themselves for the old Puritans of England',[2] they had quite good reason for doing so.

Throughout the century the word Puritan continued to be used as a term of condemnation or contempt. It seems, indeed, to have been rarely used otherwise. There were very few who, like Prynne, gloried in the name. Far more often it was more or less angrily repudiated by those of whom it was used. Montague, in 1626, was accused by the Committee for Religion of the House of Commons, of 'casting the odious and scandalous name of Puritans' upon orthodox members of the Church of England. Protest, too, against the use of the term as unduly emphasizing differences, was frequently made. 'The name of "Puritan"', wrote Jeremiah Burroughs, 'what a divider it hath been!'[3]

But already, under James I, the question was occasionally

[1] In the Preface of his *Answer* to Coke.
[2] *The Case of the Kingdom stated*, 1647, p. 6. [3] *Irenicum*, 1646, p. 177.

being asked: What is a Puritan? In a pamphlet of 1622, entitled *The Interpreter*, that question received an answer that is at least curious, written in doggerel verse. The word Puritan, the author says, was first used of people who objected to certain ritual ceremonies and to episcopacy. But the word has changed its meaning. It now signifies one who hates abuses and corruptions not only in the Church, but in the State. It is used of one who is exact in his religious duties and also a hater of Spain, and who, as a member of Parliament is fearlessly independent. Here exactitude in religious duties probably signifies Sabbatarianism, and the reference to Spain is both typical and topical. But evidently the Puritan has become a politician; and it appears that he is not much else. 'His character abridged if you would have. He's one that would a subject be, no slave.' It is perhaps of some significance that the abridged character does not involve or suggest any religion whatever. But this really only indicates how very loosely the word had begun to be used.

In a tract, probably written by Henry Parker and published early in 1641,[1] there is some discussion of this same question. Many different meanings, the author says, are now given to the word 'Puritan'. It is used so widely and loosely that it might seem that 'the world is full of nothing but Puritans'. To the Puritans in Church policy are now added 'Puritans in Religion, Puritans in State, and Puritans in morality'.[2] Often these so-called Puritans have less in common with each other than with some not so called. Even men who hold that royal prerogative is, in England, absolutely limited by law are called Puritans, whatever be their religious opinions.[3] But this, the author declares, is certainly a misuse of the term and one that has ill consequences. Even the Parliament now sitting is spoken of as Puritan, which is quite absurd. If it were so all England would be Puritan, which it certainly is not.

Such references and citations as have so far been given might easily be multiplied, but to little or no purpose. They serve chiefly only to illustrate the fact, of which evidence abounds, that in the seventeenth century no generally recognized

[1] *A Discourse concerning Puritans.* It was published as by John Morris, which name seems to be only a pseudonym. It has been attributed to John Ley, and may possibly not be by Parker though it looks like his.

[2] Ibid., p. 13. [3] Ibid., p. 45.

meaning was attached to the word Puritan. Quite early in the century, indeed, the word still had a fairly well-recognized meaning, but by 1640, at least, that meaning had been almost lost. Far more often than not the word was used as a mere term of abuse. That fact might possibly be taken to mean that, whatever a Puritan was, he was not a popular person. But the word was bandied about too freely and too loosely even to indicate that much. The fact that while people spoke of Puritans, they did not speak of Puritanism seems indeed to be of some significance. It suggests an unthinking superficiality in the use of the word. Puritanism seems to be a discovery of later thought and research. That, however, does not involve that it had no actual existence.

Chapter III

THE EVIDENCE OF BAXTER

BORN in 1615, Richard Baxter was ordained in 1638, and began his ministry at Kidderminster in 1641, at the age of twenty-six. According to his friend, admirer and editor, Matthew Sylvester, the first part of his *Reliquiae* was written in 1664. That most valuable and illuminating work contains evidence, of unusual value and suggestiveness, concerning the character of people popularly called Puritans in his youth, in the 'thirties of the century. It has to be remembered that in writing this account of the experiences of his youth, Baxter was looking back more than twenty and even more than thirty years. It is probable that he exaggerated the strength and distinctness of his early impressions. In memory his blacks may have become blacker and his whites whiter. But that hardly affects the value of his evidence in the present connexion.

Baxter himself seems to have regarded the word Puritan as a mere term of abuse used by the ignorant and the irreligious. But I am not, at present, concerned with his own views, but only with his memories of how the word was used in his young days, in Shropshire. He tells us that the 'rabble' called his own father a Puritan, 'only for reading Scripture when the rest were dancing on the Lord's Day, and praying . . . in his house and for reproving drunkards and swearers, and for talking sometimes a few words of Scripture and the life to come'.[1] This, too, in spite of the fact that he conformed in everything and never spoke against bishops or used extemporary prayers in Church. It was the same for all the 'godly conformable ministers' of the neighbourhood; they were all, in popular parlance, Puritans. Their conformity was irrelevant. For, in fact, 'the profane and ignorant sort of people', who, apparently, formed a vast majority, called every one Puritan who lived an openly religious life, made much, practically, of the Scriptures and the Lord's Day, and objected strongly to habits of swearing and

[1] *Reliquiae*, ed. Sylvester, 1696, pt. I., p. 3. All my references are to this, the first, edition, published five years after Baxter's death in 1691.

drinking. One wonders what they would have made of George Herbert or of Laud and whether they would have been saved from such branding by their tolerance of Sunday sports.

It may be worth noting that, in his *Histriomastix*, Prynne, in his own manner, gave substantially the same account as Baxter of the popular attitude. 'Let a man', he says, 'make conscience of drunkenness . . . of frequenting ale-houses, taverns and tobacco-shops and presently he is cried out upon and censured for a Puritan.' Let him object to 'effeminate' fashions such as lovelocks or make conscience of frequenting play-houses or dice-houses, and he will be called a Puritan. Let him be 'a diligent hearer and repeater of sermons and lectures, a constant reader and discourser of God's word, a strict observer of the Lord's Day . . . let him be much in prayer, in meditation, in fasting and humiliation, much grieving for his sins' and the result is the same. 'Those whom the world calls Puritans', he added, 'are the best and holiest Christians.'[1]

The picture of Puritans as conceived by Baxter's profane rabble is too crude to be of much use. Happily Baxter himself supplemented it. 'There is', he says, 'among the most of the religious, serious people of these countries, a suspicion of all that is ceremonious in God's service and of all which they find not warrant for in Scripture; and a greater inclination to a rational, convincing, earnest way of preaching and prayers than to the written forms of words which are to be read in churches. . . . And they are much persuaded that a just, practical discipline would greatly reform the Church and that Diocesans, by excluding it, cherish vice.'[2] These same religious and serious people, he adds, were alarmed by the new emphasis on the word altar and considered that the bishops, 'concurred with the profane' by their approval of the *Book of Sports*.

But there is not, after all, very much to distinguish these good people from religious folk in general. Their habit of private prayer in their own houses was very wide-spread and their dislike of swearing and drunkenness was very far from peculiar to them. We are not told that they were believers in Calvinistic predestination, though Baxter, perhaps, assumed that they were. In any case, it is clear that all that is here said of them

[1] *Histriomastix*, 1633, pp. 805–7. [2] *Reliquiae*, I, p. 32.

might be true, whether or no. Nor are they represented as necessarily averse to episcopacy, though they distrust the actual episcopate. They appear to have little knowledge of, or interest in, politics and to be capable of a certain tolerance. They are, indeed, rather like Baxter himself. They are suspicious of ceremonial in worship, partly because they are suspicious of everything they have learned to associate with what, no doubt, they called Popery. They are apt to see Popery in talk about altars or in a cope or in the sign of the cross. One may, at this point, be reminded of Zeal-of-the-Land Busy, finding Popery in gingerbread and talking sad nonsense in *Bartholomew Fair*.[1] But that, evidently is gross caricature; and Jonson must, it seems, have sympathized with the profane rabble.

There was, no doubt, a deeper reason for their suspicion or dislike of ceremonious ritual. They felt profoundly that God should be worshipped with a worship really personal and utterly sincere, 'in spirit and in truth'. Ceremonial suggested to their minds that the worship itself was merely formal. They did not see that a worship of God in spirit and in truth may seek to express itself partly in ritual and symbol. So also set forms of prayer made to them the same suggestion. It is obviously true that the use of set forms may be merely formal. But it is equally obvious that extempore prayer may be imitative or insincere.

But they were honestly and entirely convinced. They were preoccupied with the thought of the life to come and could not keep it out of their conversation. Whether they were Calvinists or not, they lived in the fear of God and in the fear of Hell. Accordingly, they walk warily, constantly on the look-out for the snares set by the devil all about their path. They suspect, it may be, that the delight of dancing and play is one of these snares. At least they are very sure that to indulge in such delights on the Lord's Day is sheer profanity.

What Baxter gives us is a picture of a small number of deeply religious people living, as a minute minority, among people for the most part wholly given over to the world, the flesh and the devil. It appears that the mass of the population detests and resents any kind of religion that involves more than a few formal acts. It is not only irreligious, but actively hostile

[1] Ben Jonson's *Bartholomew Fair* was first acted in 1614.

to religion. In considering this, large allowance must be made for exaggeration probably great; and, perhaps, too, for a difference, possibly considerable, between the people of remote Shropshire and the people of eastern England. But if anything like it be supposed true, his Puritanism might be regarded as essentially a moral protest against prevalent irreligiousness, frivolity and brutishness. In that case it would not be clear why Nicholas Ferrar should not be reckoned a Puritan, even though he made his protest in a very different form. So far as Puritanism represented a moral protest and reaction, it must be distinguished, and can only be distinguished, by the form that protest took. On this aspect of the subject more will be said later.

The account given by Baxter of people called Puritans, points clearly to two modes of thought and feeling which I take to have been essential, and to some extent distinctive, features of Puritanism. There is, first, the belief that liturgical ceremonial and sacerdotal sacramentalism was somehow inconsistent with a vital personal religion. This failure to understand a type of religiousness that was not his own, though it can hardly be said to be peculiar to Puritans, yet seems to have been an essential element in Puritanism. Secondly, and intimately connected with this, was the more fundamental and more completely distinctive belief that all doctrines and modes of worship not directly warranted by Scripture were alike to be condemned as forbidden. To the prevalence of these beliefs among Puritans generally, all Puritan literature testifies.

It has often been suggested that it was the nature of the Puritan's religious consciousness that made him averse to ceremonial in worship and to what may be called the Catholic conception of priesthood and sacrament. The Puritan was antagonized by anything that seemed to him to obstruct a direct approach to God. To him ritualistic worship was at best a hindrance, if not actually idolatrous. It seemed to him inconsistent with a worship of God in spirit and in truth.

But this clearly was a delusion. Between an aversion to ceremonial and sacramentalism and a desire to feel oneself, as it were, alone with God there is no necessary or logical connexion. Probably all religious people have, at times, felt that desire; nor is there any ritual that can hinder nor can any

priest prevent, even if he wished to do so. There are people who feel, normally, a need for guidance in worship or simply the need of the support of tradition and the sense of being part of a great fellowship. There are many whose worship is most naturally expressed through symbolic ritual. There are those whose belief in altars is as real and personal as any belief in election. It may, also, be said that a 'priest' of any church who comes obstructively between men and God is certainly not doing his duty. It is the function of a priest, by means of the administration of sacraments, to maintain just that personal consciousness of the divine that the Puritan sought for. A priest, I have heard it said by one who very seriously believed in priesthood, is nothing after all but a conduit pipe.

The perception that God cannot be truly worshipped with mere forms and ceremonies is in no degree peculiar to or distinctive of Puritanism. But failure to understand Catholic or neo-Catholic forms of religion must, I think, be regarded as one of its essential elements. So complete was that failure to comprehend that the Puritan found it difficult, or impossible, to believe that true religion could exist in such a form. But it would be absurd to suppose that the failure was due to mere stupidity or lack of imagination.

It was at least partially due to the Puritanic way of thinking of the Bible. The most significant sentence in Baxter's description of Puritans is that in which he tells us that they were suspicious of 'all which they find not warrant for in Scripture'. They did not merely believe that the words of the Bible were the very words of God translated into English. There was nothing at all distinctive in that belief. What distinguished the Puritans was a belief that no doctrine was to be held and that nothing should be done in the service of God that is not expressly enjoined in Scripture. Rutherford tells us that he taught 'that no day besides the Sabbath, should be kept holy and sanctified with preaching and the public worship of God . . . seeing such days so observed are unlawful will-worship and not warranted in Christ's word; and that anything in God's worship not warranted by Christ's Testament and Word was unlawful.'[1] Hence arose the Puritan's difficulty in

[1] Letter to his parishioners in Scotland, 1626. See the Rev. T. Smith's edition of *Rutherford's Letters*, p. 272.

recognizing that those who indulged in rites and ceremonies not specifically enjoined in Scripture could be truly religious. Hence, too, logically enough, came his aversion to any appeal to tradition or Church authority or to the Fathers. His tendency to deprecate if not to denounce human philosophy and learning might be similarly derived. He might even be led to suggest, as was suggested in the Little Parliament of 1653, that nothing should be studied at the Universities save the Scriptures and 'the works of Jacob Behmen and such like'. When the Puritan spoke of a belief as 'superstitious', he did not mean that it was founded on imaginative fear or on hearsay or mass suggestion. He meant, usually, simply that it was unwarranted by Scripture. There was to him no possible approach to God save through the Scriptures.

But Baxter's account is evidently incomplete. However we characterize Puritanism it was capable of degrees; and Baxter's Puritans are of the simplest type. He was not, of course, writing about Puritanism: he had, it seems, no distinct conception of any such thing. There were elements in Puritanism as essential as either of those to which he directs attention; and of these his account tells us nothing.

Chapter IV

SABBATARIANISM

ONE of the most striking and significant facts of the history of England during the seventeenth century was the development and spread of what is known as Sabbatarianism. Many degrees of it appear, and we cannot say that, at any time, all Sabbatarians were Puritans. Long before 1640, however, all Puritans seem to have been Sabbatarians.

At the time of James I's accession, Sabbatarianism, in the form it was then taking, was a relatively new thing. In the early days of the Reformation in England there is little trace of it. The Injunctions of 1547 had instructed the clergy to teach people 'that they may with a safe and quiet conscience, after their common prayer, in the time of harvest, labour upon the holy and festival days'; and even that to refrain, on religious grounds, from doing so would be offensive to God. But the doubt implied on that point was probably due merely to Catholic tradition. Definite Sabbatarian sentiment of the new type, however, certainly appears under Elizabeth. Bishop Aylmer of London was censured for playing bowls on Sunday, as Calvin himself, as it happens, used to do. John Northbrooke, in 1579, denounced dancing and 'vain plays or interludes' on the Sabbath day. But the serious spread of Sabbatarianism of this kind seems to have started with the publication, in 1595, of a book by a Suffolk rector named Nicholas Bound.

In *The True Doctrine of the Sabbath* Bound maintained that the command to keep holy the seventh day was intended as permanent law and had established not merely a ceremonial but a moral obligation. The Jewish Sabbath, therefore, remains intact and we are all still bound on the Lord's Day to a 'notable and singular rest'. The change from the seventh to the first day of the week is, he argued, merely a change in the mode of counting. This was the view generally taken, though in 1628, a certain Theophilus Brabourne declared that the change of day was a Popish

corruption and that we are bound to keep our Sabbath on Saturday.[1]

'It is almost incredible', says Fuller, 'how taking this doctrine was.' Among the learned, he adds, there was much difference of opinion. There were some who suggested that this insistence on the Sabbath 'was on set purpose to eclipse all other holy days; to the derogation of the authority of the Church; that this strict observance was set up . . . to be a character of difference to brand all for libertines who did not entertain it'.[2] It is, indeed, probable that the doctrine was attractive to many, because it implied that the Sabbath was the one really holy day, and that the holy days of the Church were mere human inventions, if not downright Popish. But this will not account for the wide spread of the new doctrine. Its propagation was, no doubt, much assisted by the anti-clericalism of the upper classes; and it certainly spread far beyond Puritan circles. It may, indeed, be said to have long outlived Puritanism; and it is with us still. Yet it has been suggested that the worker in the modern world of industrialism owes to Puritanism the security of his Sunday holiday. But the idea of Sunday as a sacred holiday is centuries older than Puritanism; and anything less like the Puritan Sabbath than our modern Sunday, as kept by most people, it would be hard to imagine. It may, rather, be said that our Sunday is the old Sunday of Laud and of Charles I, even though, to a great extent, bereft of all connexion with religion. It would, perhaps, be still nearer the truth to say that we have but recently got rid of that oppressive institution, the Puritan Sabbath.

The publication of Bound's book quickly led to controversy. With the argumentation on one side and the other we are not, here, in the least concerned. But it may be noted that, in 1607, Thomas Rogers, chaplain to Bancroft, attacked the new Sabbatarianism in the preface of a book he dedicated to the Archbishop.[3] On the other hand, the learned Thomas Lightfoot argued in favour of Sabbatarian views.[4] For a time controversy seems to have died down, but after 1625 it vigorously

[1] *A Defence of that most ancient ordinance of God, the Sabbath Day*, 1628.
[2] *Church History*, ed. Nichols, 1868, vol. III, p. 160.
[3] *The Catholic Doctrine of the Church of England.* He makes the suggestion recorded by Fuller as to why the Presbyterian or Puritan party adopted Sabbatarianism.
[4] Sermon. *Works*, ed. 1822, vol. VII.

revived. In 1636, Peter Heylyn's *History of the Sabbath* presented the Laudian view of the question. But it was the action taken by Charles I himself that led to the liveliest demonstrations.

Mr. Keith Feiling has pointed out that the Catholic Sunday was deeply rooted in the habits and customs of the English people. A people predominantly rural loved its wakes and Whitsun ales and Sunday singing and dancing.[1] Fuller says that there were some who, while they disagreed with the views of Bound and his followers, yet thought that because they tended to the advance of religion, it were pity to oppose them. On the other hand, as Mr. Feiling remarks, George Herbert approved of maypoles and morris dancing.

In 1618, James I, having discovered that the liberties of his people of Lancashire[2] were being unlawfully interfered with by certain magistrates and ministers, had issued a declaration ordering that 'after the end of divine service our good people be not disturbed, letted or discouraged from any lawful recreation.' Charles I's Declaration of 1633, commonly called the *Book of Sports*,[3] was in substance the same as that of James, though rather more precise and explicit. It was provoked by the discovery that, under cover of recent statutes prohibiting bull-baiting and dramatic performances on Sundays, an attempt was again being made to suppress lawful recreation on that day. The words quoted above from the earlier Declaration were exactly repeated and specific mention was made of archery, dancing, maypoles, Whitsun ales and morris as being lawful. No one, of course, was commanded, or even recommended, to take part in such sports if he did not wish to do so. The King merely declared that it was his express will and pleasure that 'the feasts of the Dedication of Churches, commonly called Wakes', should be held as of custom. The bishops were ordered to publish the Declaration in all their parishes.[4]

That the issue of this declaration, at this moment, was a tactical error may be true; but, if so, the fact seems to me entirely unimportant. It was, certainly, a mistake to use

[1] *History of the Tory Party*, 1924, ch. III.

[2] Puritans, it seems, were particularly numerous in Lancashire: perhaps because Romanism was also strong there.

[3] The text is in Cardwell's *Annals*, II, p. 240.

[4] The Declaration issued by James was ordered to be read in all parish churches; but in that case the order was afterwards withdrawn.

provocative language about Puritans and precisians and to suggest unworthy motives to explain their zeal. Yet, as a protest on behalf of liberty, and of law, and against the spread of an oppressive superstition, the declaration had real value. It may even be held that its fault lay in not going far enough. No one was to be allowed to take part in the Sunday festival games who had not, previously, been to church.

There seems, however, to be no doubt that the immediate effects of the Declaration were wholly mischievous. It appears to have stimulated rather than checked the spread of Sabbatarianism. 'Many men', says May, 'who before had been loose and careless, began upon that occasion to enter into a more serious consideration of it, and were ashamed to be invited by the authority of churchmen to that which themselves at the best could but have pardoned in themselves as a thing of infirmity.'[1] Such men, it is true, must have been at least half-converted to Sabbatarianism already.

Perhaps the most mischievous result of the issue of the Declaration was that it placed the unfortunate bishops in a very difficult position. It was far more injurious to them than to their opponents. Since they had no other means of effectively obeying the order for publication, they ordered the parish clergy to read the Declaration publicly in their churches.[2] Insistence produced serious friction, and the assertion of episcopal authority against those who refused obedience furnished the other side with martyrs. Nor was it easy to deal with forms of compliance that were equivalent to a refusal. Fuller says that some, who obeyed the order, read the Declaration first and followed it up by reading the Fourth Commandment. The bishops were represented not only as sanctioning, but as endeavouring to secure the profanation of the Lord's Day. The pious horror aroused by the Declaration led many to ignore or grossly misrepresent its actual content. Much of the language used about it is almost incredibly extravagant and absurd and is certainly significant.

'I know not what drift the prelates had', wrote one who should have known much better, 'but this I am sure: they took

[1] *History of the Parliament of England which began November 3rd, 1640*, by Thomas May, ed. 1854, p. 24.

[2] Heylyn pointed out that the Bishops could not give orders to constables or churchwardens and that, in many villages, the churchwardens could not read.

the ready way to deprive us both of manhood and grace at once; and that in the shamefulest and ungodliest manner, upon that day which God's law and even our own reason hath consecrated that we might have one day at least of seven set apart, wherein to examine and increase our knowledge of God, to meditate and commune of our faith, our hope, our eternal city in heaven and to quicken withal the study and increase of charity; at such a time that men should be plucked from their soberest and saddest thoughts; and by bishops, the pretended Fathers of the church, instigated by public edict and with earnest endeavour pushed forward to gaming, jigging, wassailing, and mixed dancing, is a horror to think.'

There are other passages in his writings far more horrifying, but it seems to me something of a horror to think that this was written by John Milton.[1] But it is characteristically Miltonic. We have here at once the suggestion of an ideally great Sabbath and, along with that, an entire disregard of the relevant facts. To say or to imply that the bishops had endeavoured to force people into dancing and drinking was little better than a lie, even if you believed such an evident absurdity. There had been nothing in the Declaration or in the action of the bishops that could hinder any one from keeping such a Sabbath as Milton would have had men keep. He had only to read the Declaration to know that. Did he really imagine that any village rustic had been plucked from high meditations? The Declaration had pointed out that if the 'common people' were not allowed to enjoy games on Sunday, they would have no time at all in which they could do so. They might surely have one day in seven set apart for their enjoyment. And could anything, under the circumstances, have been more absurd than the phrase about despoiling men of their manhood and grace?

The passage quoted from Milton is, however, far from being an extreme example of the kind of nonsense that was said or written about the *Book of Sports*. Beelzebub himself, wrote Prynne, could not do more, were he an Archbishop, than our bishops have done to secure the profanation of the Sabbath and 'to make it the Devil's day instead of the Lord's day and to advance his own kingdom and service in it'.[2] An

[1] *Of Reformation in England*, 1641. [2] *News from Ipswich*, 1636.

anonymous writer of 1643 went yet farther. He declared that the *Book of Sports* was 'the source and headspring . . . from whence profaneness is gone forth into all the land'. The King, he says, 'commanded the profanation of the Lord's Day . . . to make an experiment of his power . . . if so be his command could give check and mate to God's command'. 'Doubtless', he continued, 'the Bishops plotted and planned that garland of May games and then persuaded their Lord and Master to crown the Lord's Day with it: the greatest dishonour and mockery that ever was offered to the Lord Christ, since the crown of thorns was set upon his head.'[1] It would almost seem that, by 1643, there were people who believed that 'May Games' were among the innovations of the Laudian bishops.

It would be absurd to suppose that Sabbatarian or even Puritan sentiment would generally have approved such extravagancies as these. Yet Sabbatarianism seems to have shown quite early a tendency to extremes. Thomas Rogers, in 1607, says that he heard of preachers who declared that to do any work or to play bowls or ring bells on Sunday, is as great a sin as murder.[2] 'Many moderate men', says Fuller, 'are of opinion that this abuse of the Lord's Day was a principal procurer of the Lord's anger, since poured out on the land in a long and bloody civil war.'[3] Even Fuller himself was not sure that it was not so. In 1636, appeared a ludicrously horrible book entitled *A Divine Tragedy lately acted.*[4] The author tells a number of tales in illustration of God's wrath and vengeance on Sabbath-breakers, with appropriate comments on the awful nature of the offence and the justice of the divine action. He gloats over the sudden deaths of men who had dared to ring church peals and of young women who had danced on the Lord's Day. He attributed an outbreak of plague to habitual Sabbath-breaking. The book reads almost as if it had been intended for a burlesque.

Though Puritan Sabbatarianism cannot be judged of by its extreme manifestations, it yet seems to have been always what we should now regard as extreme. Even Baxter, who

[1] *Powers to be Resisted*, 1643. I shall have occasion to refer again to this very remarkable pamphlet.
[2] *The Catholic Doctrine of the Church of England*, Preface.
[3] *Church History*, XI., sec. 2, ed. 1868, p. 425.
[4] This has been attributed to Prynne.

would never have used such language as Milton's, denounces Sunday play and declares that so much of the day as can be spared from public worship, should, as far as possible, be spent in 'holy family exercises'.[1] The appetite and capacity for such exercises seems, in many, to have been untiring.

A very thorough and strict Sabbatarianism was, it can safely be said, a feature of the developed Puritanism of Charles I's time. There is no question but that the Puritans were Sabbatarians; the question that needs an answer is what made them so. It certainly will not do to say that the Puritans became Sabbatarian out of hatred of the bishops or from a desire to decry and 'ruinate' Church authority. Such an explanation of the facts is totally insufficient even though there be a little truth in the assertion. Very simple-minded people may have become strict Sabbatarians merely on the strength of the Fourth Commandment and a belief that the Jewish Sabbath had not been and never could be abrogated. Yet only rarely can the matter have been as simple as that. Even with the simple and sober, Sabbatarianism was probably partly due to the association of the feast days and holy days of the Church with the great bogy, Popery. The Church's Sunday, they would think, must be either the Sabbath ordained by God for the Jews or a mere human invention of no account. They were far from being prepared to think it of no account. Later, indeed, there appeared sectaries who held that it was needless for them to keep any particular day holy, since to them all days were the Lord's. But that occurred in the time of a Puritanism that was disintegrating.

It seems certain that, with all but the simplest, much more than this was involved in Sabbatarianism. The extreme views that appear to have been common cannot possibly in this way be accounted for. How was it possible to conceive, and in what sense could it be conceived, that to ring bells on Sunday was as bad as murder? Such a notion suggests, on the face of it, some strange deformity of ordinary moral sense. That such views were possible seems to imply that Puritan Sabbatarianism was based on something far more fundamental than accidental associations or thin argument from Scripture. How can this

[1] *The Divine Appointment of the Lord's Day*, 1671. In Baxter's *Practical Works*, ed. Orme, vol. XIII.

tendency in Puritanism to extreme forms of Sabbatarianism be explained? Until an answer is found to that question we are little further advanced towards an understanding of Puritanism. The suggestion of an answer must be left to the next chapter.

Chapter V

WILLIAM PRYNNE AND THE *HISTRIOMASTIX*

A VERY simple Bible Christian might believe that he ought not to dance on the Lord's Day, though on any other day he might do so with a good conscience. But could any sane man believe that dancing on the Lord's Day was a sin so awful that one might very well expect to be struck dead in the very act, and yet believe that dancing on other days was no sort of sin at all? It seems highly improbable that any ever did so believe. 'Carnal, worldly pleasures, you know', says Prynne, 'are no part, no particle of a Christian's comfort; he can live a most happy joyful life without them; yea, he can hardly live happily or safely with them.'[1] Puritan Sabbatarianism would seem to be intimately connected with a particular kind of outlook on life and on the world. For the sake of clearness it will perhaps be best to attempt a short description of that outlook, in quite general terms, before proceeding to show how it was manifested in Puritan writings.

The world we live in is, indubitably, an attractive place, full of beauty and of wonders that excite desire and curiosity. We might well, it seems, spend our time merely in trying to answer the innumerable questions it puts to us. But to the Puritan it seemed that so to use time was, at best, to waste it. Life offers multitudinous chances of adventure and pleasure and of the satisfaction of ambitions that relate to this world only. All that was to him but snare and delusion. Man, whose life is so short and so insecure, has no time to concern himself with the ephemeral. In view of his final destiny and of the immense future that lies before him, care for these trivial things is at best a frivolous folly. The pursuit of them implies a failure to realize his position and the nature of the divine revelation that has been made to him. Such a failure is very near to positive unbelief. It may be thought of as mere folly; but it is a folly that is likely to lead to Hell. Nothing is of any real importance to any of us except our own salvation and, perhaps, that of others.

[1] *Histriomastix*, 1633, p. 966.

That thought and sentiment of this kind was characteristic of Puritans, there is abundant evidence to show. The exact character of such thought varied, of course, from one individual to another. It was not quite the same in Prynne as in Rutherford, and in Baxter it differed from them both. But in one form and degree or another, it was the thought of all these three highly representative men. I must call them to witness and let them speak for themselves.

No one is likely to deny that Prynne was a representative Puritan. His voluminous writings illustrate vividly much of what is commonly associated with Puritanism. He can, of course, be regarded as representing only a particular type of Puritan, and any impressions or conclusions derived from his writings must need correction by comparisons. But some of his writings express very fully the outlook which was characteristic of Puritanism and which underlay Puritan Sabbatarianism.

William Prynne, like Pym, a Somersetshire man, was born in 1600 and was called to the bar in 1628. The very first of his immense list of publications was an essay in orthodox Calvinism on the impossibility of a fall from grace. But, however Calvinistic his theological views may have been, he became, later, a champion of extreme Erastian opinions against the orthodox Presbyterians. Baillie, in 1645, classed him with Selden among those Erastian lawyers who were, in his opinion, the chief obstacles in Parliament to the establishment of true Calvinistic discipline in England.

His Puritanism, however, soon showed itself in ways more decisive. In 1628, he published a tract entitled *The Unloveliness of Lovelocks*; a title which speaks for itself. In that same year appeared his attack on John Cosin's *Devotions*. This merely exhibits his intolerant detestation of a form of religiousness he did not in the least comprehend. Far more fully expressive and of far greater significance was the *Histriomastix* of 1633.

For more than fifty years past, ever since the publication of Northbrook's attack and of Stephen Glosson's *Schoole of Abuse*,[1] in 1579, the development of the great Elizabethan drama had been accompanied by a chorus of Puritan denunciation. Glosson's tractate had announced itself as 'a pleasant invective

[1] Reprinted in 1841 along with Heywood's *Apologie for the Stage*, ed. J. P. Collier.

against poets, pipers, players, jesters and such like caterpillars of a commonwealth'. He had followed it up with similar diatribes. In 1582, in *Players Confuted*, he had declared that stage plays 'are not to be suffered in a Christian commonwealth'. Others had followed suit. Most notable perhaps were *The Anatomy of Abuses* by Philip Stubbes in 1583, and the *Overthrow of Stage Plays* by Stephen Reynolds in 1599. In his *Histriomastix*, Prynne summed up the whole series with exhausting completeness, quoting or referring to a number of these earlier denunciations of the playhouse and all its works.

It is significant that there is nothing in this book to show that, of the plays produced in his own time, Prynne knew anything at all. He seems, rather, to have prided himself on not knowing what he was writing about. For evidence of the truth of his assertions, he relied chiefly on what the Fathers, from Tertullian to Ambrose, had said about the stage of their times. It does not seem to have occurred to him that it might not be safe to accept their statements as evidence of the condition of the theatre of his own day. But, for all his ignorance, he felt no doubt whatever.

According to Prynne, stage plays originated in devil worship and were, in fact, first invented by the Devil himself. On this assertion, which he proved by reference to the Fathers, he laid immense stress. Naturally, therefore, being devil-born, they are 'the very poison and corruption of men's minds and manners, the very fatal plagues . . . of those states and kingdoms where they are once tolerated'.[1] They are, he says, for the most part ribald and blasphemous. Full of amorous embracings and wanton gestures and accompanied by 'effeminate, lust enticing' music, song, and dance, and by 'profane, inordinate laughter', they pander to every kind of sensuality. They are the very chief of all the pomps and vanities of this wicked world and minister to all the sinful lusts of the flesh. It is vain to talk of reforming them. Had there been any way of making them serve good ends, the Devil, whom 'long experience hath made exceeding politic', would never have invented them.[2] The character of those who frequent the playhouse, and of those who perform there, is alone enough to demonstrate its

[1] *Histriomastix*, 1633, p. 2. [2] Ibid., p. 105.

Satanic nature. Stage players 'are commonly the most criminous and enormious persons of all others'.[1] He would like to have them all flogged. The 'major part', at least, of play-goers are dissolute, profane, idle, and godless people, 'who hate all grace, all goodness'.[2] Stage plays, 'sinful, heathenish, lewd, ungodly spectacles', banish from our minds all those thoughts which should occupy and content a Christian. If men run after play-acting, it 'is a sure character that they have yet no part in Christ'.[3] He repeats again and again that persistence in play-going must needs entail damnation.

Prynne admitted that a play might possibly contain good matter, good poetry, or good history. Even so, he declared, they are but idle, radically frivolous and 'frothy'. At the very best we can only waste our precious time by play-going. 'The Church of God, not the play-house, is the only school; the Scriptures, sermons, devout and pious books, not plays, not play-books, are the only lectures.'[4]

'Carnal mirth and riotous jollity', says Prynne, 'all Christians know that these are sinful.'[5] He denounced all 'mixed' dancing as uncompromisingly as he denounced the stage. 'The way to Heaven', he declared, 'is too steep, too narrow, for men to dance in and keep revel rout. . . . Men never went as yet by multitudes, much less by morris dancing troops to Heaven. Alas, there are but few who find that narrow way; they scarce go two together: and those few, what are they? Not dancers, but mourners; not laughers but weepers; whose tune is lachrymose, whose music sighs for sin.'[6]

It must not be hastily concluded from such passages as this that Prynne saw nothing but evil and waste in delight in the things of this world or that he condemned as sinful all forms of recreation. The *Histriomastix* includes a remarkable passage which proves that was not the case. To the question whether he would have men live without joy or recreation, he made quite a striking answer. 'They have choice enough', he wrote, 'of sundry lawful recreations and earthly solaces to exhilarate their minds. They have the several prospects of the Sun, the Moon, the Planets, the Stars, with all the infinite variety of creatures, to delight their eyes. They have the music of all

[1] *Histriomastix*, p. 125. [2] Ibid., p. 145. [3] Ibid., p. 970.
[4] Ibid., p. 101. [5] Ibid., p. 140. [6] Ibid., p. 244.

birds and singing creatures to please their ears; the incomparably delicate odoriferous scents and perfumes of all herbs, all flowers, fruits, to refresh their noses; the savoury tastes of all edible creatures to content their palates, so far as the rules of sobriety and temperance will permit: the pleasures that orchards, rivers, gardens, ponds, woods or any such earthly paradises can afford them: the comfort of friends, kindred, husbands, wives, children, possessions, wealth and all other external blessings that God hath bestowed upon them.'[1] He went on to give a list of 'honest or healthful recreations', as riding, hunting and fishing, wrestling and running, and the 'singing of Psalms and pious ditties'. The details of the earlier part of the passage are, perhaps, rather unconvincing. But the whole passage should be remembered when we think of Puritanism.[2]

For all that the fact remains that Prynne thought of play-acting and play-going as amusements fit for devils and of playwriting as at best waste of time and unbecoming to a Christian. How came he to believe this and what is it that lies behind these strange assertions? If he had shown any signs of discriminating, we might suppose that he had definite moral grounds for objecting to this or that kind of drama. If he had condemned on moral grounds such plays as Ford's *'Tis Pity She's a Whore*, or arraigned the coarseness of *Bartholomew Fair*, or objected even to Fletcher's *Faithful Shepherdess*, he might have made out a case not wholly unreasonable. But to him all play-going was damnable, which must mean that he did not even begin to consider the actual moral content or tendency of particular plays. It was not the play that shocked him, for he knew no plays. What shocked him was what seemed to him the senseless waste involved in their production and, still more, the response of the audience.

It is, however, impossible to be quite sure what was at the back of Prynne's mind when he wrote the *Histriomastix*. Probably he did not know how much of his dislike of the theatre was due to its association for him with people he disliked. But it is not a question only of Prynne's mind. His diatribes illustrate an attitude towards the theatre, common, or even

[1] *Histriomastix*, pp. 965–6.

[2] It is a little unfortunate, but characteristic, that Prynne should immediately have followed this with the passage quoted here on p. 277.

usual, among Puritans. So prevalent was it that, in the time of their domination, all theatres were forcibly closed. After that it was only in 1656, when Davenant persuaded the authorities to allow him to produce what he called opera in London, that any kind of dramatic performance again became permitted.

The Puritan attitude towards the stage seems to me to be crucial. However unintelligent it might be in particular cases, an attitude so general can only be explained by some characteristic outlook or mode of thought. Any satisfactory explanation of it will necessarily cover much else. What was it that Puritanism so loathed in the theatre? It was not the quality of particular plays nor was it drama simply as such. Whether they knew it or not it was rather the response of the audience than the stage itself to which Puritans objected. The stage merely pandered to ungodly appetites.

Drama, obviously, may express almost any point of view. It may produce on an audience any effect from delight to repulsion, from exhilaration to depression or boredom. But what the theatre, broadly and roughly speaking, responds to, is a demand for the representation of human relations in all their varying aspects. It appeals to and it stimulates zest in the variety of life, its picturesqueness, its moral problems, its tragedy, and comedy, its beauty, its fun, and its sadness. It may express mere scorn or mere despair; it may jest and gibe or be merely farcical. It suggests all manner of questions, though it cannot possibly answer any. But always it corresponds to some kind of interest in life as we know it.

It was, I take it, just the fascination of this holding up of some sort of a mirror to human nature, to which the Puritan objected. Granting his premisses and assumptions, his objection was not by any means entirely unreasonable. Zest in the spectacle of life's variety implies, at least, some tolerance of types and moods, motives and deeds, that were, to the Puritan, intolerable. Prynne complains that when virtue is represented on the stage it is, nearly always, a pagan virtue, divorced from true religion, without which there can be no true virtue. There is, in the theatre, a profane suggestion that it takes all sorts to make a good world. The stage calls upon us to contemplate with interest ill deeds and evil men, to sympathize with, if not

to condone, sin. It jests when it should weep and weeps when it should reprobate. These very points are made by Prynne himself over and over again. 'This is no place, no time, no world', he wrote, 'for Christians to laugh or be merry in; but to bewail their sins and others' sins, that so they may escape the eternal torment.'[1] Even in the next world, it seems, things are not going to be much better. 'There is no jesting', says Baxter, 'in Heaven or in Hell.'[2] 'The miserable desolations of God's Church abroad', wrote Prynne, should alone be sufficient 'to cause our Hellish jollity and mirth to cease.'[3] To go to the theatre is to turn one's back on the grim realities. It is to seek truth or beauty or pleasure elsewhere than in God. It is to turn from the few things that matter and run after the lures of the devil. Eternal torment is the fate in store for the mass of mankind: that thought alone should keep us out of the theatre. This is a world in which a constant preoccupation with the scheme of salvation, and the awful truths revealed, is the only sure sign that one has a chance of escaping that fate. All the truths that matter are, in the theatre, ignored or implicitly denied.

It is evidently probable that those who thought or felt like this would, under the actual conditions, become Sabbatarian; and that their Sabbatarianism was likely to take an extreme form. On such a basis, indeed, Sabbatarianism becomes almost a matter of course and, anyhow, a mere detail. Such people would tend to condemn dancing, and gaiety in general, not only on the Sabbath but at any time. But it must be noticed that in Puritan dislike of 'mixed' dancing and of certain features of the stage, there was present, at least sometimes, an element which so far has been but barely indicated. In the *Histriomastix* its presence is painfully apparent. In Prynne, certainly, the sexual element in life aroused repulsion and revolt. As between men and women it would seem that, to him, to use his own words, all embraces are 'lewd' and all mixed dancing is 'lascivious'. The ugly words recur continually in his book. Representation of such 'wantonness' on the stage, or indulgence in it on a floor or on a village green, seemed to

[1] *Histriomastix*, p. 293.
[2] *The Saints' Everlasting Rest*, 1650, bk. III, ch. 6. In the Library of Theological Studies, ed. 1887, p. 259.
[3] *Histriomastix*, p. 3.

him wholly abominable, demoralizing and unchristian. Feeling like this seems to have been very common among those we call Puritans. That, however, does not mean that a Puritanism that was free from it did not exist.

The attitude towards life in general explicitly expressed in the *Histriomastix* would seem to have been the same as that implied in extreme forms of Sabbatarianism. Taken together, the two things suggest that such an outlook was characteristic of, if not essential to, Puritanism. Prynne, it may be held, for all his real ability and his indomitable energy, was but a poor specimen of a Puritan. In some respects he might even be regarded as eccentric. But I think that examination of the writings of such very different men as were Rutherford and Baxter, confirms the general conclusion so far arrived at.

Chapter VI

SAMUEL RUTHERFORD

THOUGH not an Englishman, Samuel Rutherford was intimately connected with English controversy, both political and religious, and played an important part therein during the critical years from 1644 to 1648. With his adventures in Scotland we are not concerned; but he had become prominent as a supporter of the Scottish Covenant and, in 1638, became professor of divinity at St. Andrews.

Appointed in 1643 as one of the Scots Commissioners to the Westminster Assembly, he was in London for about four years. He became in those four years perhaps the most formidable champion of the cause of strict Presbyterianism in England. He seems at the present day to be best known by his *Lex Rex* of 1644, a somewhat incomplete statement of his political theory. More important as a contribution to English controversy, was his *Free Disputation against pretended Liberty of Conscience*, published in 1648, and one of the most effective and logical writings on either side of the question. It may be remarked here, as not irrelevant to the present discussion, that in this remarkable book, as in his controversial works generally, Rutherford refrained entirely from the stupid denunciation and grossly uncharitable abusiveness which disfigured and weakened so much Puritan writing.

But it was not in his strictly theological or controversial works that Rutherford revealed fully the character and quality of his religiousness. Those books were, it seems, but a part of the work laid upon him in a world his soul slighted. To turn from the aridity of his expositions of Calvinist theology or from his laborious controversial argumentation, to his private letters, is to get a shock of surprise. He is said to have been assiduous in attendance at the meetings of the Westminister Assembly. But in his letters of those years, as published,[1] there is hardly a hint of his controversial and political activities.

[1] A collection of Rutherford's letters was published in 1659, without his sanction and, it is said, to his annoyance. I have used the edition of the Rev. T. Smith of 1891.

In this respect they contrast in the strongest possible manner with those of his shrewd colleague, Robert Baillie. They are concerned only with his profoundest preoccupations and his most intimate feelings. He writes only of his spiritual cravings, of the vanity of earthly objects, of the shortness of life here and of the eternity to come. His language often reminds one of that of mystics of whom he would not, it seems, have approved.

This statement needs a certain qualification. One cannot doubt Rutherford's sincerity, and his letters were probably a refreshment to him. But they are certainly what may be called professional: he is always in the pulpit. As a preacher he had a great and justified reputation; and he appears to have regarded preaching as the main business of his life. It was what he could do best, and the duty became a habit. The themes of his letters reappear in his sermons; and his letters remind one of sermons. They show a consistent regard for effect, and his spiritual experiences are expressed rhetorically. When he writes to a friend, 'I know not what ye have if ye want Christ', we catch the accent of the pulpit. It is clear that he wrote as much to edify his friends as to express himself. No doubt he conceived it his duty always to be edifying.

For all his pulpit mannerisms and his rhetorical affectations his letters show clearly enough what were his main and constant preoccupations. He dwells perpetually on the brevity and fragility of life on earth, on the preciousness of the little time we have and on the ephemeral nature of all the allurements of this world. 'Sir', he wrote to a friend, 'there is a great deal of less sand in your glass than when I last saw you, and your afternoon is nearer eventide now than it was. Ye eat and drink, but time standeth not still; ye laugh, but your day fleeth away; ye sleep, but your hours are reckoned and put by-hand. O how soon will time shut you out of the poor and cold, hungry inns of this life!'[1] He saw the world as a kind of prison. 'We but dwell here', he wrote, 'because we can do no better; it is need, not virtue, to be sojourners in a prison: to weep and sigh and alas! to sin, sixty or seventy years in a land of tears: the fruits that grow here are all seasoned and salted with sin.'[2] What may happen to us, coming from outside, matters nothing. 'Let Christ fare well, suppose I should eat ashes!' God and the

[1] Letter of 1637, ed. 1891, p. 269. [2] To Lady Kenmure, 1646, p. 457.

love of Christ are all that is important to us. 'It is not our part to make a treasure here. Everything under the covering of Heaven we can build upon is but ill ground and a sandy foundation: every good thing, except God, wanteth a bottom and cannot stand its lone.'[1] 'Woe upon all love but the love of Christ!'[2] In what strikes me as the finest passage in these letters, death appears as a home-coming. Some one had been killed in fighting near Newcastle, and he was writing to a bereaved lady. 'It maketh not much', he wrote, 'what way we go to Heaven; the happy home is all, where the roughness of the way shall be forgotten. He is gone home to a friend's house and made welcome and the race is ended. Time is recompensed with eternity and copper with gold. God's order is in wisdom; the husband goes home before the wife; and the throng of the market shall be over ere long and another generation where we now are; and at length an empty house.'[3]

Upon these same favourite themes, Rutherford enlarged, finely, in a sermon of 1645.[4] 'The more you converse with Christ', he told a remnant of the House of Lords, 'the more you partake of Heaven: to be with yourself is to be in ill company. . . . All of us generally fail in the bad husbanding of time; we are a-dying ere we know for what end we live. . . . Imagine that our spirits, once entered within the line of eternity, could but stay up beside the moon and look down and behold us children, sweating and running for our beloved shadows of land, fields, flocks, castles, towers, crowns, sceptres, gold, money; he should wonder that reason is so blear-eyed as to hunt dreams and toys. Judge righteously, give fair justice to Christ,[5] do good while it is to-day, consider the afternoon of a declining sun. Within a few hours we are plunged in the bosom and womb of eternity and cannot return back again. Lord, teach us to number our days.'

Between Rutherford's outlook on the world and that of Prynne there is a certain difference but a deeper similarity. To Prynne, worldly goods and pleasures were dangerous devil's lures; to Rutherford they were worthless and vanity, 'toys and

[1] Letter of 1637, p. 275. [2] Ibid., p. 124.
[3] To Barbara Hamilton, 1645, p. 450.
[4] Sermon before the House of Lords, preached June 1645, and printed the same year.
[5] That is, by establishing a strict Presbyterian system in England.

dreams'. Prynne, perhaps, we may say, thought most of Hell and Rutherford most of Heaven. To Prynne the good life is one of rejection and repression; to Rutherford it consists, rather, in a constant preoccupation with things divine. But the difference between them is exaggerated even in saying this much. Both agree that to pursue any object that has no reference to a future life, or to seek satisfaction anywhere but in God's word, its warnings and its promises, is to turn away from all that really matters and take the road that leads to perdition.

Chapter VII

RICHARD BAXTER

EVERY one thinks of Baxter as a Puritan, and yet, in many ways, he was very unlike those most of us think of as Puritans. He was, to begin with, an episcopalian: not, indeed, of the school of Laud but rather of that of Usher. It was Downame, he tells us, who satisfied him that episcopacy was both legitimate and also, practically, the best form of Church government. He made, however, sharp and accurate distinction between what he calls the old and the new conceptions of episcopacy. The old episcopal divines, he averred, did not regard bishops as necessary to the being of a church, nor did they hold that none but episcopal ordination was valid. The new school of 'prelatists' held both these doctrines; and he perceived that the difference here was profound. The Anglo-Catholics seemed to him to have broken with Protestantism and become irreconcilable separatists.[1]

Ordained a minister of the Church of England in 1638, he found no difficulty in conforming in almost all respects. Though he had doubts about the lawfulness of using the sign of the cross and wearing the surplice, and never himself did either, he felt no scruples about the ring in marriage and was satisfied that kneeling was proper at the sacrament. He had no objection to set forms of prayer and little to the actual Prayer Book.

When the Civil War began, Baxter joined with the Parliamentarian party and he became for a time a chaplain in the New Model. He admitted later that the fact that most of those he esteemed godly were for Parliament, 'did greatly work with me and more than it should have done'.[2] He was always a conservative in the sense of Hyde, and, after 1649, a royalist at least in theory. But he seems to have known and cared little about politics and had no real understanding of the issues on which the war began. To him it was, primarily, a war for the defence and preservation of Protestantism and, secondly, for

[1] See his *Five Disputations of Church Government and Worship*, 1659.
[2] *Reliquiae*, ed. 1696, pt. I, p. 39.

the secure establishment of a civil constitution which he conceived much as did Hyde. Consequently, the way things actually went profoundly shocked him. It seemed to him that Parliament and the army destroyed the constitution they had set out to save. After the abolition of monarchy, though he preached submission to the powers that were, he maintained always that Charles Stuart was rightful King of England. His view of Cromwell was much like that of sober royalists. But his politics have here little or no relevance. Puritanism cannot accurately be associated with any sort of political theory that is not strictly theocratic.

It was in other and far more important respects than any so far mentioned, that Baxter was isolated among Puritans. In the breadth of view he, at least finally, attained, in his questioning habit of mind and freedom from dogmatic assurance and in his, on the whole, tolerant attitude towards those who disagreed with him, he differed greatly from the rank and file of Puritans.

If there was one thing on which Puritans were definitely agreed, it was that the Scriptures were, literally, the very words of God. Baxter, though at times he doubted, believed this also, but he was quite clearly aware that doubt on the matter was neither wholly irrational nor simply wicked. Rutherford was sure that the main propositions of Calvinist Presbyterianism could be positively demonstrated from infallible Scripture. He was equally sure that 'the mind is under God's obliging law to conceive aright of all divine truths'.[1] But, wrote Baxter, 'the subjective certainty cannot go beyond the objective evidence. . . . My certainty of the Deity is greater than my certainty of the Christian faith, my certainty of the Christian faith in its essentials is greater than my certainty of the perfection and infallibility of all the Holy Scriptures; my certainty of that is greater than my certainty of the meaning of many particular texts and so of the truth of many particular doctrines.'[2]

'Heretofore', he contined, looking back perhaps twenty years, 'I knew much less than I know now; and yet was not half so much acquainted with my ignorance. . . . Now I perceive how very little it is we know in comparison of that which we are ignorant of. . . . New experience hath constrained me,

[1] *The Divine Right of Presbyteries*, 1644, p. 381. [2] *Reliquiae*, pt. I, p. 128.

against my will, to know that reverend learned men are imperfect and know but little, as well as I. . . . And the better I am acquainted with them, the more I perceive that we are all yet in the dark.'[1] Long before, in 1664, he wrote these striking words, he had seen clearly that mere assumption of the infallibility of the Scriptures was of no use in a doubting world. 'To affirm', he had written in 1650, 'that the Scriptures cannot be known to be God's Word without special illumination, is in my judgment a justifying men in their infidelity. . . . To tell them that the Spirit testifieth it, is no means to convince them that have not the Spirit.'[2]

Thinking thus, Baxter could not but be far more largely tolerant than was the mass of the Puritans. What he hoped and worked for was the establishment of a national church, comprehensive enough to include all who professed what he regarded as the essentials of Christianity. Called with others, in 1654, to consider what these were, he proposed that subscription to the content of the Apostles' Creed, the Lord's Prayer, and the Decalogue, should be held sufficient qualification for the ministry, on the ground that, explicitly or implicitly, they contained all that was necessary for salvation. When it was pointed out that a Papist or even a Socinian would then be able to subscribe, he seems to have replied in effect that, if so, it was so much the better. Even John Owen, relatively moderate though he was, seems to have been shocked. Though Baxter was not ready to grant legal toleration to Roman Catholicism, yet at least he wished that it could safely be done. He even suggested that a basis might be found on which Catholics and Protestants might agree to worship together with the same minister.[3] His attitude towards Romanists seems to have been very like that of Sandys in the *Europae Speculum*. 'I can never believe', he wrote, 'that a man may not be saved by that Religion which doth bring him to the true love of God.'[4]

Baxter's case is critical. If he is to be regarded as a Puritan it can only be because the respects in which he was at one with men like Prynne and Rutherford are absolutely fundamental in Puritanism. He was, indeed, too much of a saint

[1] *Reliquiae*, p. 129.
[2] *The Saints' Everlasting Rest*, ed. 1887, bk. I, ch. 2, p. 119.
[3] *Reliquiae*, I, p. 131.
[4] Ibid., p. 131.

to fit neatly into any category. Yet he was certainly a saint of Puritan type. He tells us that in boyhood he had a normal love of apples and a normal disposition to purloin them, even when otherwise to be had. He was 'bewitched', too, at that time, with a love of 'romances and fables', which, he says, 'corrupted my affections and lost my time'.[1] That, evidently, was a judgement of maturity; but, if his recollection is to be trusted, these things troubled him seriously even at the time. That, indeed, need not mean much in the case of a sensitive boy whose father talked to him about sin and Hell. But ill-health came early upon him; and in his *Reliquiae* he looks back gratefully on that fact. 'It made the world', he says, 'seem to me as a carcase that had neither life nor loveliness, and it destroyed those ambitious desires after literate fame which was the sin of my childhood. . . . Sickness and solicitousness for my doubting soul did shame away all those thoughts as fooleries and children's toys.'[2] Elsewhere he says that his infirmities 'kept me in a great contempt of the world', and 'taught me highly to esteem of time; so that if any of it passed away in idleness or unprofitableness',[3] he was much disturbed. What, then, was it that to him was profitable? Plainly, it was that only that seemed to tend to the salvation of himself and of others. What profits is preoccupation with the next world, study of God's Word, effort for the enlightenment of souls in darkness, avoidance, if only for the sake of example, of even the appearance of frivolity, faith and the love of God, sorrow for sin and effort to do better. Practically everything else, it seems, was to him unprofitable or worse.

All through his life Baxter seems to have been haunted by the idea of Hell. At first, no doubt, he feared chiefly for himself; later, I think, chiefly for others. In his latter years he was deeply distressed by the thought of the multitudes who knew nothing of the Christian revelation. 'There is nothing in the world', he wrote, 'that lieth so heavy upon my heart.'[4] Not that he then thought of them as necessarily damned. 'Yet am I not so much inclined', he added, 'to pass a peremptory sentence of damnation upon all that never heard of Christ, having some more reason than I knew of before, to think that God's dealing with such is much unknown to us; and that the

[1] *Reliquiae*, I, p. 2. [2] Ibid., p. 5. [3] Ibid., p. 21. [4] Ibid., p. 131.

ungodly here among us Christians are in a far worse case than they.'[1]

'Wilt thou leave thy sins and go to Heaven or have thy sins and go to Hell?' To Baxter, as to Bunyan, that, at every moment, was the question that mattered. Fundamental in his religion seems to have been the conviction that man is born at enmity with God and deserving of nothing less than eternal torment. Those few who, by special grace, are saved from their natural fate, are better than others only because divine grace moves them. At least when he wrote *The Saints' Rest*, Baxter seems to have believed this with entire assurance. He was amazed, as well he might have been, that men who said they believed it should behave as though they did not. 'Would not any one wonder that is in his right wit', he wrote, 'to see what riding and running and scrambling and catching there is for a thing of naught while eternal rest lies by neglected? What contriving and caring, what fighting and bloodshed to get a step higher in the world than their brethren!'[2] And yet, all the time: 'How close should they ply their work who have such great preparations attending them as we! All the world are our servants that we may be the servants of God. The sun and moon and stars attend us with their light and influence; the earth with all its furniture is at our service: how many thousand plants and flowers and fruits and birds and beasts do all attend us! The sea, with its inhabitants, the air, the wind, the frost and snow, the heat and fire, the clouds and rain, all wait upon us while we do our work.'[3]

This passage reminds us of the superb poem of George Herbert that is headed 'Man'. 'The stars have us to bed, Night draws the curtain.' What can it be but folly and sin, and in the end damnation, to pursue vain and unprofitable things in so magnificent a setting? Preoccupation with a world to come could hardly be greater than it was in Baxter. To him Heaven and Hell were the essential realities. He gave the vast labour of his life to warning others and trying to save them from Hell.

The outlook on human life and conduct which, despite differences, we find alike in Prynne, Rutherford and Baxter

[1] *Reliquiae*, I, p. 131. [2] *The Saints' Everlasting Rest*, III, 5, p. 237.
[3] Ibid., III, 6, p. 251.

was, I think, characteristic of and even essential in Puritanism. But, even though essential, it is not distinctive. It would be absurd to say that a prevailing sense of this world's wretchedness or futility was in any degree peculiar to Puritanism. 'Vanity of vanities, all is vanity' is easily said of this world without any belief in the existence for us of any other. To the Puritan, indeed, preoccupation with things merely temporal is not only folly but sin; and this distinguishes him absolutely from the mere pessimist. But everywhere in Christendom and at all times there have been many, Catholics and Protestants, possessed by a sense of the sinfulness of wasting our short time here over things having no direct reference to the world to come. Practically every passage that could be cited from Prynne or Rutherford or Baxter on the vanity of human wishes or the preciousness of time or the poverty-stricken wretchedness of earthly life, can be parallelled from the writings of Jeremy Taylor, royalist and high episcopalian. It is even remarkable how close are the parallels. 'As our life is very short, so it is very miserable', declared Taylor roundly.[1] 'This is a place of sorrow and tears, of great evils and a constant calamity: let us remove from hence, at least in affections and preparation of mind.'[2] If we wish to die well and happily, we must live 'a life severe, holy and under the discipline of the cross, under the conduct of prudence and observation, a life of warfare and sober counsels, labour and watchfulness.'[3] Like Baxter, he descanted on the spiritual advantages of ill-health: 'in sickness the soul begins to dress herself for immortality'.[4] Like Baxter, too, and more despairingly than Baxter, he was afflicted by the thought of the multitudes who had had no chance of becoming Christians. 'This consideration is extremely sad . . . that so many millions of sons and daughters are born to enter into the possession of devils to eternal ages.'[5]

The same conception of man's nature and destiny and the same consequent practical outlook that characterizes Puritanism, can be found in others whom no one calls Puritans. Others besides Puritans believed intensely in a Heaven, perhaps somewhat shadowy, and in a nightmare Hell. Others felt that they had no time to waste on the trivialities of this world and

[1] *The Rules and Exercises of Holy Dying*, ch. I, sec. 4. [2] Ibid., I, 5. [3] Ibid., ch. II, 1. [4] Ibid., ch. III, 7, 'Advantages of Sickness'. [5] *Holy Dying*, ch. I, 4.

no heart for its pleasures. It was not only the Puritan who felt that he could not afford to forget God for a moment and that it behoved him to live 'as ever in his great Taskmaster's eye'. Nicholas Ferrar, though he might have objected to the phrase, felt that at the least as much as Milton. The characteristic Puritan outlook does not enable us to distinguish the Puritan from these others.

Chapter VIII

PURITANISM

IT has already been shown that the idea that all religious beliefs or practices unwarranted by the text of Scripture were superstitious and of the nature of idolatry, was an essential and fundamental element in Puritanism. The Puritan did not merely start with the assumption that in the Bible we have the very words of God. He believed that we derive from it all that we know of God's will and of man's final destiny. He believed that, apart from the revelation in the Scriptures, we have neither knowledge nor means of knowledge. Through the Scriptures alone is any approach to God possible, for we know nothing of God but by Scripture.

This conviction is by itself sufficient to explain the Puritan's attitude towards all forms of religion that depended, in any degree, on anything outside the Scriptures. He dared not venture with rites and ceremonies not there enjoined. All forms of devotion not there distinctly allowed of, all aspirations not there suggested, he condemned in the fear of idolatry. Those who expressed devotion in symbolic ritual, those who believed that ordination by bishops conferred mysterious powers, or who recognized any authority on earth, in matters of religion, except the words of Scripture, seemed to him to be either idolators and infidels or simply insincere and irreligious. Such people, it seemed clear, must be numbered among the reprobate.

But there were, evidently, characteristic features of seventeenth-century Puritanism which cannot be thus simply and directly derived from the Puritan's way of thinking of the Scriptures. Much more than that was involved in the make-up of the complete Puritan. His demand for warranty from the Bible cannot practically be separated from his interpretation of its content. He found in it, usually, the Calvinistic theory of grace and election and, always, he found in it a vision of an eternal hell of torment. I suggest that, given the Puritan's attitude towards the Scriptures, Puritanism essentially consisted

in a particular reaction to the belief in election or, simply, to the idea of Hell. It is with some misgiving that I make this suggestion. But, if from these things we can, ideally, derive all the main features ordinarily associated with Puritanism, it will be hard to escape this conclusion.

The Puritan, on this view, is a man obsessed by the thought of election and irresistible grace. Who are they that are saved? 'They are', wrote Baxter, 'a small part of lost mankind, whom God hath from eternity predestinied to this rest.'[1] Though, to an orthodox Calvinist, assurance of salvation could not, theoretically, be absolute, yet, in mere self-defence, the believer sought to convince himself that he was in a state of grace. Only by so doing could he escape the intolerable anticipation of a future of endless torture. Puritan inhibitions may, therefore, be conceived as the result of an intense and painful craving and effort to convince oneself that one is numbered among the chosen. If, like Calvin, you believe that man's heart is so wholly given to evil that it can engender naught but perversity, you may well feel that denial and repression of the impulses and desires of your fallen nature is the way to attain that so desirable assurance. You will feel that you must come out from the multitude of the reprobate and know that you are not as they. Failure to do so would mean utter despair.

Objection may fairly be taken to this way of putting the matter, on the ground that it assumes that all Puritans were believers in Calvinistic predestination. This a large majority of them apparently were; but most of the Baptists were not; and to say that a General Baptist could not be a Puritan would hardly be justifiable. But the desire of the convinced Calvinist to assure himself that he was of the elect, was, at bottom, a fear of Hell. The suggested formula has only to be slightly altered. We may put it that the Puritan's reaction was not always to a belief in election but was always to a belief in Hell. Evidently that belief might produce results exactly similar in the orthodox Calvinist and in those who held that salvation depended in some degree on men's own freewill.

Can it then rightly be held that all distinctive features of Puritanism, excepting those derived directly from a particular

[1] *The Saints' Everlasting Rest*, I, ch. VIII.

way of regarding the Scriptures, may be, at least ideally, derived from a craving, conscious or unconscious, to escape the fear of Hell? It is possible to phrase that proposition in ways that might make it appear less repellent. But little, or nothing, would be gained by so doing. We might prefer to say fear of God instead of fear of Hell. But that substitution is only tolerable because the Puritan God is one who condemns by far the most of his human creatures to eternal torture. We might, again, change fear of Hell into hope of Heaven. But, since the two are here quite strictly alternatives, there would be no change of meaning. Hell, too, we must remember was imagined far more vividly than Heaven can often have been.

We start, so to speak, with a belief in the corruption of the human will, and with belief in a somewhat vague Heaven and in a Hell of torment prolonged to all eternity. These beliefs are supposedly derived from the infallible word of God. However they were actually derived, they were held undoubtingly. We must assume, further, such a temperament, and such training or experience, as will produce a tendency to constant preoccupation with the awful issues thus involved. Frequent dwelling on these ideas will at once increase that preoccupation and intensify belief. In the inevitable comparison with the immensity of the future life, the things merely of this world and the desires that refer to it will be dwarfed into triviality. The world will come to seem, as it did to Baxter, 'a carcase without life or loveliness', and all its ambitions and curiosities, as Rutherford says, mere 'toys and dreams'.

Many, however, may see the world thus who are not Puritans. '*Beati oculi qui, exterioribus clausi, interioribus autem sunt intenti*' was the saying of a mystic but not of a Puritan. In Puritan preoccupation with the future life, it was the fear of Hell that predominated. If that fear be once fully established, it will generate a more or less intense desire to escape. But for a man under this obsession there is only one way of escape. Whatever be the exact form of his faith, he must strive to develop a comforting assurance of salvation. The craving to do so will be intense in proportion to the intensity with which he realizes the consequences of his beliefs. And the more he dwells on the idea of damnation the more real it will become to him.

From such a state of mind as this most of the characteristics we associate with Puritanism may, it seems, be derived. A man thus dominated and obsessed, will struggle to assure himself that he is in a state of grace, that he has truly been born again, that he has forsworn the world and the flesh. However exactly he puts it, the feeling and the effort will be fundamentally the same. In anything that could tend to distract him from that effort he will see a lure of the Devil. Fear of Hell will become in him a fear of pleasure. He will see stage plays and all such diversions as forbidden fruit and traps laid by Satan. He dare not be anything but Sabbatarian. If he stand in the tower doorway to hear and see the ringing, he will fear, like Bunyan, that the tower will fall. He dare not dance and make merry; he dare not enjoy cakes and ale, not because he thinks himself virtuous, but because, for him, as for Rutherford, they are 'seasoned and salted with sin'. He dare no more take part in forms of worship not enjoined in Scripture than he dare play tip-cat on Sunday. He may well cry with Rutherford: 'Woe upon all love but the love of Christ!' For, above all, he needs to convince himself that he has come out from the tents of Kedar and has no portion with the unbelievers. He dare not partake of the loves and hopes and enjoyments of the profane multitude. He feels the most urgent need to persuade himself that he is not as other men are. He dare do nothing that might make him doubt his hard-won assurance.

It might be supposed that such an attitude would be accompanied by a settled melancholy. A tendency to that was, indeed, present; but it could be, and usually was, satisfactorily counteracted by success in obtaining the desired assurance. Once attained, that assurance set the Puritan apart from and above, ordinary, more or less profane or idolatrous, persons. Nor did the thought of their damnation as a rule cause him appreciable discomfort. If it produced any kind of gloom, it would seem to have been usually a gloomy satisfaction. Even Baxter was able to conceive and to believe that the contemplation from the height of Heaven of the torments of the damned would be one of the satisfactions of the blessed. 'The Scripture seems to affirm', he says, 'that, as the damned souls shall from hell see the saints' happiness . . . so shall the blessed from heaven behold the wicked's misery to the increase of their

own joy.'[1] He adds that the damned will then, at last, 'see a reason for the saints' singularity while they were on earth'.

So also on earth the Puritan's consciousness of salvation in a world of the damned tended to exalt him in his own eyes. The ridiculous and arrogant self-righteousness that was common among them seems to derive from this source. That same consciousness goes far, also, to account for certain other traits so common among Puritans that we cannot but associate them with Puritanism. Assurance of election or acceptance seems often, if not usually, to have gone along with an assurance of the damnation of all those opposed to him. He tended to regard his opponents as enemies of God. This helps, at least, to explain the inhuman lack of common charity towards adversaries that we continually meet with in Puritan writings. Like Calvin himself, the Puritan found it hard or even impossible to credit the sincerity of convictions opposed to his own. He charged his adversaries with hypocrisy; he even honestly imagined that they knew he was right. This readiness to attribute rascality to those who oppose us is not, of course, in any way peculiar to Puritans. It always has been, and still is, a marked feature of men's controversies. This attitude, in Puritans as in others, may of course be due to ignorance or stupidity. Nor can it be said that the trait is to be found in all Puritans. It did not necessarily arise from an assurance of salvation or a struggle to obtain it. Yet there is an evident connexion. If you see the mass of mankind as reprobate and yourself as one of the chosen, you are not very likely to feel charitably towards opponents or to admit the honesty of their convictions. To do so might possibly make you feel less secure in thanking God that you are not as other men are.

Puritanism was constituted by a particular way of regarding the Scriptures and by a particular form of reaction to doctrines supposed to be found there. The two roots thus indicated are at bottom one, since the ideas of election and of Hell to which the Puritan reacted were both, in his view, derived from the infallible word of God. But this formula arouses suspicion if not by its simplicity, at least by its apparent arbitrariness. It excludes or partially excludes many who are often considered as Puritans. It excludes absolutely, for instance, the Quakers,

[1] *The Saints' Everlasting Rest*, I, ch. 7, p. 60.

who are sometimes spoken of as Puritans, though I think wrongly. How far can such a formula be taken as expressing the complex facts? In what sense can it be 'true'? It is a question of classification and in classification all lines are a little arbitrary. But if it be found to cover a large majority of those who have been called Puritans, it may be said to be true in the only sense in which it could be true.

If the view of the matter here stated be in this sense true, or even approximately accurate, certain inferences are unavoidable. There must, it is clear, have existed degrees of Puritanism. The ideally perfect Puritan must have been rare, and the semi-Puritan far more common. The degree of a man's Puritanism would depend, primarily, on the strength of his convictions and the vividness of his realizations. There were people whose judgements on questions of sexual morality were narrowly and unimaginatively severe, people who were, also, strict Sabbatarians and perhaps condemned stringently theatres and dancing and card-playing, and yet who were essentially worldly and even commercially minded. Such people hid their worldliness from themselves by what they regarded as a religious strictness, and an intolerant attitude towards sins they had no mind to. They were perhaps the lowest of Puritan types. There were others who were Puritan in all respects except that they never quite succeeded in being sure of their election. Such men would seek to forget their doubt in activities they could think of as work for God.

It follows also that the structure of the mental complex I conceive as Puritanism was somewhat loose and unstable. It rested on assumptions that could not be rationally maintained, and on inferences from Scripture that were wide open to destructive criticism. The connexion between its various strands was largely made up of misapprehensions. Then, also, while Puritanism may be regarded as one thing, actual Puritans differed very widely in their beliefs. Puritanism, in fact, was never quite coherent, and it tended to disintegrate. As for the Puritan 'party', so far as such a thing ever really existed, its disintegration came rapidly to be complete. For, apart from any incoherence in Puritanism itself, the party included people of strongly divergent views in politics as in religion.

Chapter IX

OUTSTANDING QUESTIONS

CERTAIN other matters remain to be considered. There is, first, the question as to the political tendencies of Puritans. Modern writers of high competence, whose opinions are of well-justified weight, have described Puritans as lovers of civic freedom or as inclined to favour democratic forms of government. I find myself quite unable to agree with this view, though I hope that the disagreement is largely due to a different use of the word Puritan. There were, in my view, very few in the House of Commons of the Long Parliament who ought to be called Puritans. I do not think, for instance, that Pym was a Puritan, any more than were Falkland or Selden. The House of Commons was strongly anti-clerical and strongly Erastian. With one form of Puritanism, at least, anti-clericalism was quite incompatible. There were Puritans who, like Prynne, were Erastian; but they, it seems to me, were eccentric and exceptional. It must, to say the least, have been very hard to reconcile the Puritan principle of the sole authority of the Scriptures in matters of religion with any real or pronounced form of Erastianism.

Two different tendencies in relation to politics were present in Puritanism. I am inclined to think that the ordinary Puritan took little or no interest in politics or in constitutional questions, except in so far as they concerned religion or the form of Church government. The extent to which the controversial writings of 1641 were concerned with what may be called the Church question, is very striking and certainly significant. Judging alone from the literature of that year one would be forced to the conclusion that the constitutional issues of the moment excited little interest and attention. The great mass of the writings of that time dealt in one way or another with the position of religion and with that only. The fact is all the more striking because of the great change that came about in 1642. From the time of the Grand Remonstrance the danger and the probability of civil war was steadily and

visibly increasing. With the realization of that, the Church and all connected with it fell into the background. Controversy about religion still continued, but it was overwhelmed by, and almost lost in, a flood of writings concerned with the constitutional issues and position. It seems as though, outside the upper and ruling classes, little interest was taken in the constitutional issues till they began to threaten civil war. From all this writing one derives a distinct impression that the Puritan, as such, was as little interested as any one.

On the other hand, there was, inherent in Puritanism, a tendency towards belief in a radically undemocratic type of theocracy. It was no more than a tendency; among individual Puritans it showed itself very unequally or not at all. But I can find no grounds for associating Puritanism with any form of political theory not definitely theocratic. So far from loving civic freedom, Puritans, it seems to me, tended to desire power to compel others to accept or submit to their own valuations. That desire is the very antithesis to a passion for freedom. For a love of freedom must involve a love of the freedom of those whose values differ from our own. There are, no doubt, people of all religions, and outside all religions, who seek their freedom in service. But all of us desire our own freedom in our own way.

It might be supposed that among men intensely anxious to feel that though in the world they were not of it, there would arise a tendency to formal repudiation of all worldly ambitions and a formal withdrawal into some kind of monastic seclusion. The Ferrars, at Little Gidding, did actually realize something very like monastic life.

In Puritanism it seems that such a tendency did show itself; yet certainly among Puritans no tendency towards the formation of such communities appeared. Even had circumstances and governmental authorities been propitious, the association in the minds of Puritans of any kind of monasticism with Popery would have been enough to prevent such enterprises. Nor could the Puritan find any warrant for such a life in Scripture.

It has been said that, on the contrary, the Puritan felt himself to be called to 'the strenuous activity of the chosen'.[1] He felt,

[1] This striking phrase is Prof. Ernest Barker's. See *Church, State and Study*, 1930, p. 113.

that is, that only a life of strenuous activity could justify and maintain his assurance of election. Strenuous activity could not, indeed, possibly be conceived as of itself a mark of godliness: the strenuous activity of many of the ungodly was painfully apparent. But it is indubitably true that very many Puritans did feel that they were called to fight, strenuously and with all possible weapons, against all forms of ungodliness, misbelief, profanity and idolatry. They easily came to believe that King Charles and his supporters represented the powers of darkness.

Yet, while Puritanism undoubtedly tended to produce fanaticism of this kind, it also tended to produce a kind of quietism. It included a tendency to withdrawal from the activities of controversy and politics and the market-place. So long as the stress of war lasted and it was possible to think of it as a war against ungodliness, that tendency was checked and indeed hardly appeared. But later it became apparent. Such men as John Warr or the Henry Vane of the *Retired Man's Meditations* can hardly be called Puritans. But Vane at least, had, it seems, once been a Puritan. They illustrate a tendency that existed in Puritanism and assisted in its disintegration.

Something must here be added concerning the moral character and influence of Puritanism. It is indubitable that Puritanism involved or included a protest against prevalent lack of moral principle and prevalent loose living. In this aspect it was but part of a wider movement towards more definite moral standards. That movement is equally manifest in the thought of the High Church party. All religious movements and revivals within Christendom have been, at least to some extent, ethical in intention. The Quaker movement is another case in point. As has been said already, thought in the seventeenth century was more concerned with the idea of duty than with anything else whatever. Certainly none were more preoccupied with that idea than were the High Church thinkers.

Puritanism gave men a rule to live by and that, in itself, was of value. However narrow and unintelligent, it was far better than none. It insisted on rigid adherence to its rule; but that was merely logical. It would have stultified itself had it not done so. But its code was flawed at the base. The Puritan,

usually at least, saw duty as something arbitrarily imposed by a will beyond comprehension. This is what made it possible for him to say that ringing bells on Sunday is as bad as murder. He took little or no account of the actual needs and desires of common humanity. His code was based, not on consideration of man's nature and circumstances, but on his own interpretations of Scripture. Consequently, it could not but become, in the long run, blighting and oppressive. Much that most men see as good the Puritan saw as evil. The best feature of his morality was, it seems to me, its uncompromising condemnation of any easy and immoral tolerance of evil. But the claim that Puritanism represented moral aspirations or a moral code in any sense peculiarly high cannot be sustained. Its very strictness, its formal and unimaginative rigidity, is alone sufficient to destroy that claim. Puritanism was, I think, very far from representing the highest morality of the age.

PART V

THE ATTACK ON THE LAUDIAN CHURCH

Chapter I

PRELIMINARIES

It might be said that, in 1628–9, two conflicts of opinion, quite distinct, though circumstantially connected, met together and produced an explosion and a deadlock. The same thing may be said to have happened in 1641, and, this time, because of the development of the position in the interim, the explosion was far more violent and the deadlock so complete that civil war resulted. The conflict of opinion over the organization and right character of the national Church and that over the constitution of government were intimately entangled and reacted on each other in complex ways. But they are ideally separate; and, since we have not here to deal with an order of what are called events, they are easily separable. To attempt to treat the controversies on the two questions together could only result in dire confusion. It will be most convenient to deal first with the attack on the national Church, as actually constituted in 1641.

Bancroft's reconstructive policy and measures favoured and assisted the development of a High Church theory, increasingly opposed to Calvinism and spreading steadily, if slowly, among the more educated of the clergy. The movement, as a matter of course, took over from Bancroft the doctrine that Convocation, with the assent of the King, could make law for the national Church without reference to Parliament. It was, perhaps, this that disposed James I to favour the movement, so far at least as to accept the theory of a right divine in episcopacy. But James could never be relied upon for consistency in action. It was not till the accession of Charles that quite definite alliance was formed between the King and the High Church party. Ideally there was no connexion between any theory of royal prerogative and 'Arminian' or High Church conceptions. But at this point connexion, practical if accidental, was definitely made. The affairs of Montague and Manwaring served to make the position matter of common knowledge.

After 1629, the increasing dominance in the national Church of a party which still had very few understanding adherents outside the clergy, produced increasing exasperation. Under the direction of that party the Church was gradually assuming the form and quality which, in spite of a temporary set-back, it did finally take. The movement away from Calvinism was, in the long run, irresistible; but the advance now made was premature. The Puritan section of the opposition became more and more exasperated. The anti-clericalism of the dominant classes generally was alarmed and intensified. They associated the High Church movement with Romanism and half-believed that the Laudian bishops were actual Papists in disguise. They were quite sure, in any case, that they stood for clerical domination. Many of them seem really to have believed in the existence of a great Romanist conspiracy, of which Laud and Charles were the agents. The mere suspicion of that produced distrust of the King in every relation.

It may be here noted that, some years before 1641, Puritan exasperation expressed itself in writings of extreme violence. Something has already been said about these early attacks on the Laudian system. They would hardly be worth mention were it not that they were symptomatic of what was coming.

As early as 1629 Alexander Leighton had declared that ever since the year 600 all the troubles of the land had been due to an anti-Christian 'hierarchy'.[1] The Prayer Book and even its Articles were, to him, stuffed full with 'blasphemous untruths'.[2] The ceremonies of the bishops were described as 'a badge of the beast'. He advocated the root and branch abolition of the whole ecclesiastical hierarchy and the establishment in its place of true Calvinistic 'discipline'. He prophesied that if only that were done, sin and wickedness would disappear and all be right with Church and State.[3] Bastwick, in 1637, repeated a good deal of this but, having even less to say, was still more simply abusive.[4]

Prynne's *News from Ipswich* may finally, in this connexion, be referred to. He exhorted the King to cast down the perfidious prelates and even hang them. They, he declared, have 'oppressed and grieved thy faithful subjects, dishonoured thy

[1] *An Appeal to the Parliament or Sion's Plea against the Prelacie.*
[2] Ibid., p. 29.
[3] Ibid., p. 10.
[4] *The Litany of John Bastwick*, 1637.

God, betrayed thy religion, increased the plague among thy people and as much as in them lieth, robbed thee both of thy God's and people's love and pulled thy crown off thy royal head to set it on their own traitorous ambitious pates, by exercising all ecclesiastical power, yea Papal jurisdiction over thy subjects, in their own names and rights alone; and by trampling all thy laws and subjects' liberties, like cobwebs, thy subjects like dogs and dirt, under their tyrannical Papal feet'.[1] The tract in which this passage occurs gains something in importance from having been defiantly republished in 1641. Its recommendation that the bishops should be hanged, impudently absurd in 1636, had by this time a rather sinister quality.

[1] *News from Ipswich*, 1636.

Chapter II

ANTI-CATHOLIC SENTIMENT

THREE things combined in the attack of 1641 upon the Church as it stood. One of these, Puritanism, has already been fully considered. The second, anti-clericalism, had become increasingly exasperated in the years after 1629. Intimately connected with it was the fear and the hatred of Catholicism and of anything that looked like Catholicism. If the anti-clericalism of Parliament found a useful and energetic ally in Puritanism, it was itself both intensified, and in part produced, by that fear and that hatred. Anti-Catholic sentiment, in 1640, pervaded England so generally that it may be called a national sentiment. The ascendancy of the High Church party during the last fifteen years had intensified it. So general and so ignorant was it, that, in 1642, it was found easy and, for the moment, profitable, to throw discredit on the Royalist cause by persistent appeals to popular prejudice and credulity.

Why, asked Sir Simonds D'Ewes, should the Pope so hate 'the evangelical party' in Scotland and Geneva, 'who do commonly join eminency of piety and godliness with a most sound and absolute body of doctrine, agreeable with that of the Primitive Church'.[1] Did he really believe that the Pope recognized their godliness and orthodoxy? Apparently, almost incredible as it seems, he did. We can, he added, easily understand his attitude 'if we consider that the Pope himself, all Popish or Popishly affected Prelates, and all the Romish rabble . . . aim nothing at all at God's glory or the salvation of souls, but only at the maintenance of their wealth, pride and tyranny'.

Whether D'Ewes be accounted a Puritan, or not, does not in the least matter. The tendency to regard the Roman clergy as consciously and deliberately fostering ignorance and superstition for their own worldly ends, was very far indeed from being peculiar to Puritans. Then and much later many found it difficult to recognize Roman Catholicism as a religion of any

[1] *The Primitive Practice for preserving Truth*, 2nd edition, revised, 1645, p. 34. The book was originally written a few years before 1640.

kind. Till civil war began there seems to have been little difference of opinion on this matter among people of all parties. During the war, indeed, Royalist aversion to Catholics and to High Churchmen sensibly diminished. That was an inevitable result of the by no means inconsiderable aid and comfort given by both to the Royalist cause, in arms and in argument. The same cause produced, of course, an exactly contrary effect on the other side. The most extreme expressions of anti-Romanist sentiment belong to the few years after 1642.

It was found easy, in 1642, to propagate far and wide a belief that what was happening was little more than a Catholic rising on behalf of the King and his Popish bishops. Misrepresentation more gross can hardly be imagined. It came to be believed by many that the Royalist armies were composed mainly of Catholics. A Parliamentary declaration of August 8th 1642, actually suggested that victory for the King would be followed by a general massacre of faithful Protestants. Unscrupulous propaganda of this kind[1] helps to account for the fact that, in 1643, fear of the Catholics sometimes reached a height of absurdity that would be incredible if we had not proof of it. An illustration may here be given.

In 1643 a tract entitled *Rome's Masterpiece* was written by William Prynne and published. In this ludicrous effusion the author exhibited a credulity that seems to verge on insanity. He told a tale of how an anonymous personage who, on his own showing, had been engaged for years in infamous, if futile, plotting, made certain grave statements for transmission to Charles and Laud. The exact date of these revelations is, naturally, not disclosed. The informer, commonly referred to by Prynne as 'this good man', would seem to have been an abortive Titus Oates. After due preparation, he revealed the fact that the Jesuits had decided to stir up war with the Scots and then, somehow, to force the King into dependence on Papist support. If, even then, he refused to grant full freedom to the Catholics, he was to be murdered. For this purpose, Prynne was assured, 'an Indian nut stuffed with most sharp poison is kept in the Society'.[2] England, the good man stated, simply swarms with Jesuits: there are almost as many in England as in France, Spain, and Italy put together. Prynne

[1] For this see VI., ch. 4.

[2] *Rome's Masterpiece*, August 1643, p. 19.

considered that the plot had been so successful that now, in 1643, the King and 'all his forces' are in the power of the Papists. If now, he added, Charles should still resist their demands, either the poisoned nut will be administered 'or, if it be lost, a poisoned knife perchance',[1] will be as effective. He ended with an appeal to such Protestants as might happen to be among the King's supporters, to consider what their fate was likely to be if the Popish party triumphed.

I feel a little doubtful how far Prynne himself actually believed what he said. But whether he believed it or not does not matter: in any case he knew that there were others who would believe it. His case, though extreme, is by no means solitary: the writings of the time furnish other instances of similar delusion. It is even probable that Prynne did believe his absurd story. He seems to have been able to believe any nonsense when once his imagination was fired by the thought of Jesuits. In him, and in others, obsession with the idea of Jesuit and Catholic plots appears to have amounted to a mania. At the end of 1648 Prynne was of opinion that the 'treasonable designs' of the army were instigated by 'Jesuits and Popish priests'.[2]

But in spite of the real and serious effects obtained by Parliamentary propaganda, the asserted danger from Catholics, at home and abroad, remained, even in 1642, a little vague and unreal. Certainly in 1641 attention was almost entirely concentrated upon the High Church party and its bishops. In 1641, as in 1628, that party was seen as essentially Popish. It seemed, too, in 1641, far more formidable than it had seemed at the time of the Montague disturbance. Hatred of the bishops seems to have been really far more intense than mere anti-Roman sentiment, though the two things are barely separable. D'Ewes, in his *Autobiography*, declared that he could honour a virtuous Papist, but that it was intolerable that men who professed Protestantism should project the ruin of truth, maintain the most gross errors of Rome, cause the Sabbath to be profaned and introduce idolatry into public worship. This was no mere expression of Puritan feeling. Falkland and George Digby, though with less violent exaggeration, spoke of

[1] *Rome's Masterpiece*, August 1643, p. 34.

[2] See *A Brief Memento*, January 1649. It is included in the Somer's *Tracts*, vol. V.

the Laudian bishops much as did the Smectymnuans, and made against them substantially the same charges. Puritanism in 1641 found in the Erastian anti-clericalism of the House of Commons an ally far more practically powerful than itself.

The attitude of the House of Commons, in 1641, was such as to encourage all the enemies of the Laudian Church system and more or less to intimidate its supporters. Mere assurance of impunity was sufficient to bring about an explosion of bitterness and resentment, expressed in a flood of pamphlets and petitions. And, in spite of intimidation, the Church was by no means without defenders. Passionately acrimonious, futile and mischievous, was the resulting war of words.

Chapter III

CONTROVERSY IN 1641–1642

§1. THE CONTROVERSY IN GENERAL

In the spring of 1641 there was published a tract entitled, *The Way towards the finding of a Decision of the chief Controversie now debated concerning Church Government.* It was written by John Hales, and is rather like a spring of cool, fresh water in a hot, stony and barren waste. It was not in defence of the Laudian Church system that Hales wrote, nor had he any infallible panacea for admitted evils. In view, as he says, of many differing judgements he refused to dogmatize. The main object of his treatise was to indicate what seemed to him the right and reasonable method of approach to the questions in debate. He pleaded for moderation in statement, for a tolerant attitude towards all who dissent from our opinions and for readiness patiently to listen to whatever they have got to say. So only, he argued, could any rational conclusion be reached.

To ascertain, he laid it down, what is the right, or the best, form of Church government, we must search the Scriptures, we must try to discover the intentions of the Apostles and we must consider for what purposes the Church exists. Arguing on this basis he reached a tentative conclusion in favour of the retention of episcopacy. His episcopacy, however, was not that of Carleton or of Laud; it was rather such as Baxter or Usher approved of. And he was quite aware that he might be in error. A system of independent churches, he remarked, each free to develop its own rules and doctrine, 'is not *perhaps* answerable to Christ's intentions'.[1]

He concluded with an exhortation to all parties to eschew passionate and rash assertions and 'apply themselves rather to heal than to exasperate sores, rather to build up than to pull down. The Lord give us all understanding.'[2]

[1] *The Way towards the Finding*, etc., 1641, p. 10. The italics are mine.
[2] Ibid., p. 42.

It is really needless to say that such pleas as this had no influence whatever with the mass of disputants. In their willingness to suspend judgement and in pleading for reasonable moderation, Hales and Thomas Fuller stood, at this time, almost alone. It was, of course, true that no rational conclusion and no kind of agreement as to what should be done, could emerge from controversy on the lines on which it was actually being conducted. But the desire to pull down seems to have been far stronger than the desire to construct; and the end, as Hales foreboded, was merely increased exasperation.

The publications of 1641 dealt with every aspect of the ecclesiastical situation and represented many different points of view. With arguments that had been repeated so often that one wonders why any one troubled to state them, the writers attacked or defended episcopacy as a form of Church government. Some dealt with the proposal to exclude bishops from the House of Lords; others demanded their total abolition. It is significant that only a very few declared definitely for the establishment of a Presbyterian system, though a good many tracts seem to imply a desire for it. Of the advocates of thorough-going Presbyterianism a certain Richard Byfield, 'pastor of Long Ditton, Surrey', was perhaps, the most outspoken. He frankly subordinated all civil magistrates to the spiritual power of the Church. He was, also, of opinion that the death of anti-Christ and the rejuvenation of the world were close at hand.[1] But only a few tracts dealt in any way generally with the right relations of Church and State; and of these few Henry Parker's alone were anything but vague and insignificant.

More numerous than all these together were writings attacking and denouncing, not episcopacy, but the existing episcopate and its supposed doings. Hooker, 'great in all wise men's eyes except his own',[2] had noted among the Puritans of his time, a tendency 'to impute all faults and corruptions wherewith the world aboundeth unto the kind of ecclesiastical government established'.[3] Now, in 1641, the bishops were made responsible for everything their enemies disliked, from 'the profanation of the Lord's Day', to an alleged increase of

[1] *A Treatise of Power*, 1641. B.M. E. 170 (11).
[2] John Spenser: in the preface to the edition of 1604 of the *Ecclesiastical Polity*.
[3] *Ecclesiastical Polity*, Preface, Clarendon Press, I, p. 146.

adultery and the circulation of Ovid's poems.[1] There was, of course, much complaint of pluralities and lack of preaching and of 'scandalous ministers', and a great deal of denunciation of superstitious and idolatrous ritual, images, altars and crosses. It was frequently declared that Popery was being encouraged and that 'superstition' was alarmingly increasing. The Prayer Book was denounced as little better than something called the 'Mass Book' and Parliament was exhorted to abolish it altogether.

The so-called 'Smectymnuan' controversy was started early in 1641 and dragged on its weary length into 1642, enlivened only by Milton's first efforts as a controversialist. But that was only an item. Sometimes, as in that case, writers answered each other directly; but in most cases they launched their challenges into a void. Those who attacked and denounced were far more numerous than those who defended. The defenders of the existing Church system, of the bishops or the Prayer Book, though they too were numerous, were far fewer than the assailants. Not only were they fewer but they were on the whole, with the partial exceptions of Joseph Hall and Jeremy Taylor, feeble and ineffective. Relatively reasonable as they were, they failed miserably in counter-attack. Discouraged, perhaps, by the attitude of the Houses of Parliament, they lacked confidence and vigour. No really effective answer was made to Milton, though it should have been easy to make one.

It is a remarkable fact that perhaps even more numerous than attacks on the existing Church system, were denunciations of the 'independent' or separatist sects who seem, in 1641, to have emerged from hiding-places.[2] They were denounced or ridiculed in an astonishing number of publications in themselves trivial. No doubt the attacks upon them came from many different quarters. Their public appearance seems to have generated absurd rumours. In one of this series of pamphlets, a list is given of sects supposed to exist; and we discover, with amazement, that they included Mahometans, Chaldeans, Assyrians, Bacchanalians, Donatists and Heathens.[3] What this means I cannot imagine, unless it were intended for

[1] In the 'Root and Branch Petition' of December 1640. See chap. VI.
[2] In 1642 they were certainly far more numerous.
[3] *A Discovery of 29 Sects*, September 1641.

a joke. But some at least of the sects mentioned did actually exist. We hear of Anabaptists, Brownists, Familists, Adamites and Ranters. Seekers had been spoken of as early as 1617; they reappear now, though perhaps not the same. What seems to have excited special indignation was the preaching, at sectarian gatherings, of persons not merely unauthorized but of lowly station. One 'Green the Feltmaker' was held up to ridicule and reprobation in at least three different pamphlets. That such a person should have religious views of his own was doubtless regarded by many as highly objectionable; that he should openly declare and propagate them was an outrage. As early as June 1641, the scandal was taken notice of in the House of Commons, where Holles complained of the preaching of 'mechanical men'. Some of the offenders were formally reproved by the House; which may possibly have encouraged them. Holles and his friends could not afford to quarrel seriously with probable supporters. On the other hand, a few tracts appeared in defence of separatists and demanded toleration for them. Of these by far the most important was Henry Burton's *The Protestation Protested*, of May 1641.

The intellectual value of this mass of what can hardly be called literature was remarkably low. There is not very much in it that can be counted argument. There is a great amount of mere sound and fury, declamation and passion, exaggeration to the point of absurdity, wild and unsupported assertion and stupid abusiveness. There is a good deal that looks like deliberate lying and slandering. Except for the contributions made by Parker, Lord Brooke, and Burton, by John Hales and Milton, and the remarkable tract called *The Humble Petition of the Brownists*, there is hardly one of all that has any distinction either of style or content. The chief impression derived from acquaintance with all this controversy is of a great variety of conflicting opinions, expressed, as a rule, with apparently groundless dogmatism and accompanied by passion unchecked and irrational.

§2. THE SMECTYMNUAN CONTROVERSY

It was the publication, in January 1641, of Bishop Hall's *Humble remonstrance to the High Court of Parliament* that gave rise

to what has been called the Smectymnuan controversy. His *Episcopacie by Divine Right* had appeared the year before. Joseph Hall was an active and versatile man, well known as a peace-loving controversialist and as the author of popular *Meditations* and *Observations*. He was the author, too, of satires which were to win praise from Gray, the poet of the *Elegy*. He was not, in the fullest sense, a High Churchman, and probably disapproved of the practices of such men as Wren and Cosin. If he were not himself a Calvinist, he certainly, on all occasions, showed sympathy for the Calvinists. He had become Bishop of Exeter in 1627 and by conciliatory tactics, and without any recourse to prosecutions, is said to have succeeded in entirely ridding his diocese of non-conformity among the clergy. He was regarded as the most moderate of the Laudian bishops; and his moderation seems to have aroused suspicion and displeasure in Laud.

Hall's *Episcopacie by Divine Right* was little more than a summation of what had been said again and again in the last forty years. By lengthy argument from Scripture, supported by frequent reference to the Fathers, he tried to prove that episcopacy had been founded by Christ himself and built up by the Apostles. Had there been any early intention, he argued, of establishing a Presbyterian form of Church government, it is impossible that this should never have been heard of till these latter days. On the other hand, his claims for the episcopate were moderate and were cautiously phrased. He did not go nearly as far as Carleton had gone. Bishops, in his view, were overseers and moderators, with power to ordain and with power to censure and it was their duty to maintain order in the Church. In his *Humble Remonstrance*, while declaring that every church which can establish episcopacy should do so, he disclaimed the belief that there can be no true church without bishops. In *A Defence of the Humble Remonstrance*, published a few months later, he repeated this disclaimer and added that he did not hold the view that no valid ordination was possible except by bishops.[1]

Hall's *Humble Remonstrance* was a logical sequence to his book on episcopacy. To the case for episcopacy he had already stated it added nothing. It was a petition and a warning.

[1] *A Defence of the Humble Remonstrance*, April 1641, p. 131.

'Many furious and malignant spirits', he complained, 'have burst forth into slanderous libels' against the form of Church government derived from the Apostles. Shutting their ears to reason and 'all evidence of history', these people denounce alike our episcopacy and our liturgy. Parliament must needs be aware of these 'miserable disorders' and should declare definitely against the rebels and put a stop to their activities. Any attempt, he told the Houses, to set up a non-episcopal form of church government would lead to schism and he prophesied that schism would breed schisms. A dreadful prospect of disintegration lies before us.[1]

Controversy quickly followed this rather audacious appeal to Parliament. In March appeared the famous *Answer*, 'written by Smectymnuus'.[2] That was followed by Hall's *Defence* and, in May, by Usher's *Originall of Episcopacy*. It was in May, too, that appeared Milton's first contribution to the controversy. It is needless to give here a list of the Answers, Vindications, Confutations, and Animadversions that ensued. Milton alone, between May 1641 and April 1642, contributed five separate tractates to the series.

It may be well here to point out that Hall's moderation and reasonableness contrasted strongly with the tone of the attacks made upon him. His own *Defence of the Remonstrance* was indeed unduly contemptuous in tone, though not without excuse. Yet even that is cautious and conciliatory as compared with the effusions of his critics. It added little to what he had already said. In reply to the constantly repeated assertion that a claim of *jus divinum* for episcopacy involved infringement of the King's supremacy, he made the old and usual distinction. 'It is God that makes the bishop, the King that gives the bishopric.'[3] To the attack made by Smectymnuus on set forms of prayer, he made the obvious answer. God is a free spirit; 'and so should ours be in pouring out our voluntary devotions upon all occasions. Nothing hinders but that this liberty and the public liturgy should be good friends and go hand in hand.'[4]

Hall's writings, it may be added, amount to the best defence made at this time for the Church as it stood. Sanderson

[1] *An Humble Remonstrance*, 1641, p. 7.

[2] This word is made out of the initials of the actual authors: Stephen Marshall, Edmund Calamay, Thomas Young, Matthew Newcomen and William Spurstowe.

[3] *A Defence of the Humble Remonstrance*, 1641, p. 125. [4] Ibid., p. 20.

published nothing to the point till much later, and Thorndike's *Right of the Church* appeared only in 1649. George Morley's *Modest Advertisement*, of 1641, was reasonable and moderate, but far too modest to be effective. Far more important is Jeremy Taylor's *Of the Sacred Order and Offices of Episcopacy*. Published at Oxford, in August 1642, when the need for caution had passed, his book was an uncompromising statement of High Church views. Non-episcopal churches, Taylor asserted, have no right whatever to command obedience. Actually, they are not obeyed; and there is no reason why they should be. No sort of authority has been divinely conferred upon them. But the authority of bishops is derived directly by succession from the Apostles whose delegates they orginally were and whose representatives they are now. Episcopacy, he declared, is but another name for Apostleship and bishops can rightly claim universal obedience. They alone have power to ordain and presbyters are but their delegates and derive power from them. The laity have no right to take any part in the government of the Church. Taylor admitted that actual coercive power could only be derived from the King, but he maintained that, in all spiritual matters, supreme power of jurisdiction lay with the bishops. No such frank statement of a rather extreme High Church view had been made during 1641. Taylor's book had a certain value at the moment, but his argumentation was weak and unlikely to impress any one not already convinced.

Chapter IV

MILTON'S WRITINGS OF 1641–1642

§ 1. THE FORM

THERE is very little in Milton's earlier record to prepare one for his writings in 1641. That he was much occupied, quite early, with religious ideas is shown by his youthful poems: the hymn on the Nativity, the sonnet written on his reaching the age of twenty-three, the poem on the Circumcision, and the fragment on the Passion. But as he grew towards maturity, the religious element in his poetry sensibly diminished. The poems written at Horton between 1632 and 1637 are classical and not Biblical in their inspiration. Nor is there in them any sign of Puritanic views, save for the famous and solitary passage in Lycidas, which seems so oddly out of place in that consummate academic exercise in elegiacs. He appears at Horton as one withdrawn from the life of business and action, to study, and to shape his dreams. He is a natural student, a born artist and the most scholarly of poets. From April 1638 to August 1639 he was abroad, lingering in Florence and in Rome, and mixing with the learned and the literary in a society that was certainly not Puritan. Yet, less than two years after his return to England, he plunged into the Smectymnuan controversy with a fervour that is like an outbreak of pent-up hatred.

'What the practices of the Prelates have been,' Smectymnuus had written, 'ever since from the beginning of Queen Elizabeth to this present day, would fill a volume like Ezekiel's with lamentation, mourning and woe to record. For it hath been their great design to hinder all further reformation; to bring in doctrines of Popery, Arminianism and Libertinism: to maintain, propagate and much increase the burden of human ceremonies; to keep out and beat down the preaching of the word; to oppose and persecute the most real professors; to turn all religion into a pompous outside and to tread down the power of Godliness.'[1]

[1] *An Answer to a book entitled An Humble Remonstrance*, March 1641. Postscript.

These and similar propositions it was that Milton undertook to defend and on this text he wonderfully enlarged. In doing so he obliterated the Smectymnuans far more completely than he answered Hall. He made himself the champion of the Puritan attack on the Church as it stood and, for the moment, he took a Presbyterian standpoint. To the armoury of Puritan or Presbyterian argument in the old standing controversy he had really nothing to add. All he said, or rather all of it that was relevant, had been and was still being said by others. But never before had the case been presented so completely or with anything distantly resembling his power of phrasing and consummate rhetoric.

Milton could decorate the feeblest and most threadbare argumentation, or the most preposterous assertions, with a dignity of style and a splendour of phrasing unequalled. Frequently, indeed, his prejudice and his passion degraded even his style. His productions of this time are full of the most painful and glaring contrasts. In reading them, one is alternately thrilled by his eloquence and disgusted by his arrogance and by a scurrility that at times becomes sheer vulgarity. He should, as has been remarked already, have been easy to answer. It should have been easy to expose his dogmatic assumptions, the reckless and obvious falsity of many of his accusations, his caricature of history and his outrageous lack of common charity and decent manners. But no one did it. Hall and his supporters were quite unequal to the task. The author of the *Modest Confutation* did indeed pay Milton back in some of his own coin.[1] His indignation was fully justified; but abuse was not what was wanted. It was a mistake to imitate Milton's execrable manners; and to call him a 'carping poetaster' was irrelevant and silly as well as rude. What was needed was a douche of the coldest water and a restrained irony. It may be regretted that Milton was not answered by Sanderson. But Sanderson, perhaps, saw nothing worth answering; and in any case the whole tone of the controversy would have repelled him.

The plea has been advanced that Milton's scurrilous virulence was merely the controversial manner of the times. That

[1] *A Modest Confutation of a Slanderous and Scurrilous Libell*, January 1642. This was not written by Bishop Hall but, perhaps, by his son or by his chaplain.

plea cannot be admitted to have any value whatever. It was not the manner of the times in any sense that could serve to excuse any one. It was, it is true, the manner of many writers and especially among Puritan writers. But there were many whose style of controversy was totally different. Milton's manner was not that of Hales or Hammond, Ferne or Thorndike, Sanderson, Rutherford or Baxter. The plea is one which simply ignores the facts.

Few people nowadays, it seems, read Milton's prose writings, except, perhaps, in selections of purple passages. Few, therefore, realize how low he could descend. But the very greatness of the man and of his reputation demand that this should be realized. I will quote, in illustration, from his *Animadversions upon the Remonstrant's Defence*. Here we are given quotations from the defence followed by answers, in the form of a dialogue. The answers must necessarily be taken as Milton's own.

'Remonstrant. No clergy in the whole Christian world yields so many eminent scholars, learned preachers, grave, holy, and accomplished divines, as this Church of England doth at this day.' The assertion was near enough the truth to be fairly justified. 'Answer. Ha, Ha, Ha!'

Stupid rudeness like this is bad enough: but what is to be said of the following?

'Remonstrant. Truly, brethren, I can say no more but that the fault is in your eyes. . . . Wipe them and look better. Answer. Wipe your fat corpulencies out of our sight!'

Of all his writings of this time, the *Animadversions* was the most coarsely abusive. In a preface Milton himself attempted a defence of its tone. He says, in effect, that his opponent being a 'notorious enemy to truth', insincerely defending for 'worldly respects' what he knows to be false, it is justifiable to be so 'transported with the zeal for truth', as to handle the rascal roughly. Under the actual circumstances this defence only makes the matter wose. The essence of Milton's offence was his unfounded and arrogant assumption that Hall was a man of this character.

For Milton's abusive virulence and for his readiness to impute hypocrisy to those who disagreed with him, only one line of defence is possible. Dogmatic and uncharitable denunciation of adverse opinion is one thing under conditions in

which all opinion is, at least, legally tolerated, and quite another under the conditions of the seventeenth century. I may think that an opinion or an attitude, religious or political, is rooted in mere personal or selfish interests, but, under modern conditions, there is no excuse for saying so, unless I can supply proof positive, which is very rarely, if ever, possible. But if those who hold that opinion try, by means of legal machinery or intimidation, to force my formal acceptance of it or prevent my arguing against it, the position is very different. In that case, justifiably angered, I am quite likely honestly to feel sure that my oppressors are hypocrites and scoundrels; and, though I shall very probably be wrong in thinking so, I shall have at least some excuse. The grand passion of Milton's life was for intellectual liberty; and he saw the Laudian Church as an attempt to dictate or to limit. The bare idea of such dictation caused him to think the worst possible of those who would restrict the freedom of his mind. Though, in Milton's case, the excuse does not cover the whole extent of the offence, yet excuse there is.

§ 2. THE CONTENT

Milton's first contribution to the controversy was the tract *Of Reformation in England.* Then followed a much shorter one *Of Prelatical Episcopacy*, written as a reply to Usher, and the *Animadversions* upon Hall's *Defence* appeared a little later. After that he was for a time silent, but early in 1642 he published *The Reason of Church Government urg'd against Prelaty*, in which there is more argument and exposition and less of mere rhetoric and abuse than in any other of these writings. Finally, in April 1642, appeared his *Apology against a Pamphlet*, a reply to the *Modest Confutation* of his *Animadversions.* These various writings support and supplement each other and may be considered together.

The tract *Of Reformation*[1] began with a highly rhetorical account of how primitive Christianity rapidly degenerated into superstition and idolatry; 'a black and settled night of ignorance and anti-christian tyranny'. This state of things lasted, we are told, right down to 'the bright and blissful Reformation'.

[1] *Of Reformation in England and the causes that hitherto have hindered it*, May 1641.

Without question or misgiving, Milton accepted the conveniently simple legend that had developed with sixteenth-century Protestantism. He gives us a characteristic picture of the great event. 'Then was the sacred Bible sought out of the dusty corners where profane falsehood and neglect had thrown it, the schools opened, divine and human learning raked out of the embers of forgotten tongues, the princes and cities trooping apace to the new erected banner of salvation, the martyrs, with the irresistible might of meekness, shaking the powers of darkness and scorning the fiery rage of the old red dragon.'[1] Unhappily our own reformers were half-hearted. England, refusing the right church discipline, retaining senseless ceremonies and superstitions and reserving the power of ordination to bishops, broke away from the reformed churches and fell far behind.

There are, he continued, three kinds of people who still obstruct and oppose our reformation. There are 'libertines' who have good reason to fear right discipline; 'politicians' who hold that monarchy demands and involves episcopacy; and 'antiquitarians' who appeal to tradition, and the so-called Fathers of the Church. For the moment he was convinced that only 'libertines' had need to fear the establishment of Presbyterian 'discipline'. He was to discover his mistake about three years later. As to the politicians, their notion, that the civil magistrate need be worried about the form of Church government, he declared to be absurd, since no church should be allowed any coercive power. That he could find for the High Churchmen no apter name than antiquitarians is only one of very many signs that he did not in the least understand their position. He poured scorn upon those who 'cannot think any doubt resolved and any doctrine confirmed unless they run to that indigested heap and fry of authors which they call Antiquity'.[2] Whatever difficulties there may be in the interpretation of the Scriptures, the writings of the Fathers are far more obscure. 'Whatsoever Time or the heedless hand of blind chance hath drawn down from of old to this present in her huge drag-net, whether fish or seaweed, shells or shrubs, unpicked, unchosen, those are the Fathers.'[3] In the time of

[1] *Of Reformation. Prose Works*, ed. Bohn, vol. II, pp. 367–8.
[2] *Of Prelatical Episcopacy. Prose Works*, ed. Bohn, II, p. 422. [3] Ibid., p. 422.

even the earliest of them the Church was already corrupt and they shared in its corruption.

It seemed to Milton that appeal to the Fathers must be insincere. Those who make it, he declared, 'fear the plain field of the Scriptures; the chase is too hot; they seek the dark, the bushy, the tangled forest; they would imbosk'.[1] Our prelates, 'mistrusting to find the authority of their order' in Scripture, 'do not shame to reject the ordinance of Him that is eternal for the perverse iniquity of sixteen hundred years'.[2] He must have meant that they did so consciously, or 'do not shame' would be nonsense. And, with characteristic, question-begging rhetoric, he proceeded to expand the absurdity. 'Let them chant what they will of prerogatives, we shall tell them of Scripture; of custom, we of Scripture; of acts and statutes, still of Scripture; till the quick and piercing word enter to the dividing of their souls and the mighty meekness of the Gospel throw down the weak mightiness of man's reasoning.'[3] Yet at that very moment he should have had in mind Hall's elaborate and detailed argument from the Scripture in his *Epicospacie by Divine Right.* I feel by no means sure that he had even read it.

Milton was emphatic in declaring that the right form of Church government is prescribed in the Scriptures. It is 'set down by divine prescript as all sides confess'. He even asserted that this the bishops 'dare not deny.'[4] Considering that, from Whitgift to Hall, whom he was supposed to be answering, most of them had explicitly denied it, the assertion sounds strange. Perhaps he meant that Presbyterians and believers in episcopacy by divine right, both found their chosen form prescribed in Scripture. In that case he was only saying that the bishops dare not deny what they asserted. But the muddle was probably due to haste or carelessness. In *The Reason of Church Government,* Milton distinguished clearly enough between those, Presbyterians or episcopalians, who held that Church government was 'platformed' in Scripture and those who denied, like Hall, that anything was there platformed.

It is interesting to notice that, in respect at least of Church

[1] *Of Reformation. Prose Works,* II, p. 389.
[2] *The Reason of Church Government,* 1642. *Prose Works,* II, p. 484.
[3] Ibid., p. 485.
[4] *Of Reformation. Prose Works,* II, p. 393.

government, Milton's view at this time was definitely Presbyterian. In *The Reason of Church Government*, he argued the matter at length, very weakly and confusedly, though perhaps no one could have done much better. He declared that because 'there is not that thing in the world of more grave and urgent importance throughout the whole life of man than is discipline',[1] it is incredible that the Church should have been left without a 'frame' of it in Scripture. He was merely repeating the old argument of Udall, though he poetized over it, till its extreme crudity was obscured.[2] Quite definitely, he advocated the establishment of a Presbyterian system based on consistories and topped by a 'General Presbytery'. In this system it was to be the function of the pastor to preserve 'in healthful constitution the inner man' of his flock. In this difficult task he was to be assisted by 'grave and faithful brethren', elected as lay elders.

Yet it appears, after all, that the discipline conceived as so important would not necessarily amount to much or even to anything. It would certainly not have satisfied either Calvin or Robert Baillie. No coercive power whatever was to be vested in the consistory or in the Church as a whole. 'Jurisdictive power in the Church there ought to be none at all.' The very notion of ecclesiastical jurisdiction is 'a forgery of the prelates'. The sinner is first to be privately admonished by his pastor. If he remain obdurate, he is to be warned in the presence of two or three elders; and then, if necessary, is to be 'fervently rebuked' before a larger body. Finally, if still contumacious, he must be excommunicated and delivered into the 'custody of Satan till he repent'. But he can be put in no other custody. No legal consequences follow the excommunication: the civil magistrate has no concern with the matter. Nor is it clear, if the consistory have no coercive power, how the sinner can be made to appear to listen to rebuke. We are told, however, that if he repent; 'if he bring with him his bill of health and that he is now clear of infection and of no danger to the other sheep', he will be received with joy again into the fold. Does this imply that he will have

[1] *The Reason of Church Government*, pt. I, ch. I. *Prose Works*, II, p. 441.

[2] It is curious that Jeremy Taylor, a little later, made use of exactly similar argument on behalf of episcopacy. *Of the Sacred Order and Office of Episcopacy*, 1642, p. 8.

suffered social though no legal penalties? It is impossible to be sure of what exactly Milton was thinking, except that he was imagining a society or a church such as never existed anywhere. It is clear also that, even at this time, he was not really a Presbyterian.

In Milton's writings of this time, two things stand out with extreme vividness: the depth and intensity of his anti-clerical feeling and his passionate detestation of the Laudian bishops. It is hard to get the natural man really to believe that he is morally bound to obey law made by the State, except so far as he sees it is his interest to do so. To make him believe that, in matters of religion and morals, he is bound by the determinations of clerical bodies or persons, is very much harder. A man may serve two masters, but he does not willingly do so. Most of those who have believed fully in ecclesiastical authority, have wished to subject to that authority the State itself. In the ordinary anti-clericalism of the seventeenth century there was little, if anything, more than resentment at the claim of a clerical order to tell men what they ought to do or what they ought to believe. But in Milton's anti-clericalism there seems to have been much more than this. Actually, he was not being interfered with, nor had he ever been. His statement that he was 'church-outed by the Prelates' can mean no more than that at one time he was thinking of taking orders and found that he could not make the subscriptions required. He would have found the same difficulty with any church existing. But it seems that the mere existence of a class professionally claiming in some sense superiority was felt by him as a personal humiliation. Any claim to a right to interfere with or limit his intellectual freedom, however little it might practically mean, was felt by him as an insult.

What he, apparently, above all resented was the sharp distinction made by the High Churchman between clergy and laity. He does not seem to have understood the grounds of it. 'As for ordination', he asked, 'what is it but . . . an outward sign or symbol of admission? It creates nothing, it confers nothing.'[1] He makes this assertion as though no one would question it. The 'people of God', he declared, 'are now no better reputed than impure ethnics or lay dogs.' The table of

[1] *Animadversions. Prose Works*, III, p. 78.

communion, 'now become a table of separation, stands like an exalted platform upon the brow of the quire, fortified with bulwark and barricado, to keep off the profane touch of the laics, whilst the obscene and surfeited priest scruples not to paw and mammoc the sacramental bread as familiarly as his tavern biscuit'.[1] The passage exhibits not only grotesque, imaginative distortion, but a sort of jealous hatred that seems quite personal.

Most significant of all, perhaps, in this connexion is a finely written passage in *The Reason of Church Government.* In this Milton descanted upon the spiritual importance of the admission of laymen as elders, 'a royal priesthood', to authority in the Church. 'He that holds himself in reverence and due esteem, both for the dignity of God's image upon him and for the price of his redemption . . . accounts himself a fit person to do the noblest and godliest deeds. . . . Nor can he fear so much the offence and reproach of others as he dreads and would blush at the reflection of his own severe and modest eye upon himself. . . . How shall a man know to do himself this right, how to perform this honourable duty of estimation and respect towards his own soul and body? No better way doubtless than to let him duly understand that, as he is called by the high calling of God to be holy and pure, so is he by the same appointment ordained and by the Church's call admitted, to such offices of discipline in the Church, to which his own spiritual gifts have authorized him. For we have learnt that the scornful term of Laic, the consecrating of temples, carpets and tablecloths . . . the exclusion of Christ's people from the offices of holy discipline, through the pride of a usurping clergy, causes the rest to have an unworthy and abject opinion of themselves, to approach to holy duties with a slavish fear and to unholy doings with a familiar boldness.'[2]

What is it that Milton was saying? It is not ordination, but personal gifts that qualify men for the exercise of a moral discipline in the service of the Church. No man who respects himself, as all men should, can acquiesce in the moral domination of a mere clerical order. Only one of slavish disposition can accept a system which brands him as inferior. Officially

[1] *Of Reformation.*
[2] *The Reason of Church Government,* bk. II, ch. 3. *Prose Works,* II, pp. 494–6.

declared unfit for the high functions God calls him to, such a one will turn with the more boldness to unholy doings.

There is evident truth in this, but distortion is equally evident. The exclusion of laymen from office in the Church was involved in the form the Church had kept since the Reformation. It was only in Milton's imagination that it involved any theory of lay inferiority in general. He might almost as accurately have held that exclusion of those not called from practice at the bar branded them as inferiors. The layman was excluded from nothing but certain specialized functions. Nor was there anything to prevent his taking orders in the Church, except disbelief in its tenets. The fact that, whether he believed those tenets or not, he was required by the law to be a member of the Church might, indeed, justifiably arouse resentment. But that fact was irrelevant to the distinction the law made between clergy and laity.

Granting that Milton was rightfully rebellious against a clerical claim to exercise moral discipline over all and sundry, he yet seems to have greatly exaggerated the extent of the claim. It seems strange that it did not strike him that, to most people, the exercise of such discipline by lay elders would be at least as objectionable as its exercise by the clergy. It was, indeed, likely to be far more oppressive than the exercise of the jurisdiction legally attached to ecclesiastical courts. If it were true that no self-respecting man could tamely acquiesce in the clerical claim, it was, surely, equally true that he would not willingly submit to the inquisition and censure of lay elders. One hardly likes to suggest that Milton overlooked it, because, in the passage last quoted, he was thinking of himself as one of the elders.

Milton's indictment of the bishops is so grossly exaggerated, so lacking in specific reference to fact, and often so evidently absurd, that it is hard to suppose he believed all he said. Hall had ended his *Defence of the Remonstrance* with a challenge to the Smectymnuans. He had challenged them to declare before God that they really believed it had been the main object of the bishops to promote Popery and beat down the preaching of the Word. Without any misgiving Milton accepted the challenge. For nearly twelve hundred years, he declared, bishops have been in England, 'to our souls a sad and doleful

succession of illiterate and blind guides, to our purses and goods a wasteful band of robbers, a perpetual havoc and rapine; to our state a continual hydra of mischief and molestation, the forge of discord and rebellion: this is the trophy of their antiquity and boasted succession through so many ages'.[1]

As for our present bishops, they have 'unpeopled this kingdom' by driving thousands to the 'savage deserts of America'. They have alienated the affections of 'our firmest and faithfullest neighbours abroad', particularly the Dutch 'whom the similitude of manners and language, the commodity of traffic . . . but chiefly religion should bind to us immortally'.[2] It is even suggested that had our zeal for true religion been greater, the Normans, Bretons, and Gascons would long ago have come to us, 'with cap and knee', begging for protection against the French.

By implication, at least, Milton charged the bishops with extorting, through their courts, large sums of money and putting much of it in their own pockets. They even, it appears, went so far as to 'revel like Belshazzar'. He complained, too, of the 'excessive waste within these few years . . . in the idolatrous erection of temples beautified exquisitely to outvie the papists; the costly and dear bought scandals and snares of images, pictures, rich copes, gorgeous altar-cloths'.[3] It is hard to say what exquisite temples he supposed to have been erected between 1630 and 1640.

As Cyrus did with the Lydians, our bishops deliberately encourage vice and profanity in order 'to effeminate us all at home'. They 'bring a numb and dull stupidity of soul, an unactive blindness of mind upon the people by their leaden doctrine or no doctrine at all'.[4] They disfigure and deface our religion 'with the dark overcasting of superstitious copes and flaminical vestures'. The sign of the cross is made 'with a profane and impious forefinger'.[5]

Not satisfied with these results of their activities, the bishops and their adherents, Milton declared, preach down our sacred laws and seek to take from us 'all the right we have to our own bodies, goods and liberties'.[6] They would sell us all as slaves to the King by their 'corrupt and servile doctrines'. They

[1] *Of Reformation. Prose Works*, II, p. 411. [2] Ibid., p. 400.
[3] Ibid., p. 402. [4] *The Reason of Church Government*, I, ch. VI.
[5] Ibid., II, ch. II. [6] *Of Reformation*, II, p. 404.

are bound to preach servile doctrine because they know that, according to the Scriptures, they ought to be deposed and abolished. That knowledge makes them completely dependent on the King. The only way of escape for them from this abject dependence is to bring back Popery; 'and this we see they had by fair degrees of late been doing'.[1] Elsewhere he had distinctly asserted that the bishops were in secret alliance with the Papists.[2]

It was but a weak case that Milton had made out and it rested almost entirely upon assumptions. It can hardly be said that he had even attempted to prove most of his assertions. It had not, apparently, even occurred to him that Laud might possibly be as sincere, as convinced, as conscientious and self-denying as he was himself. But, having assumed all that he had to prove, as soon as he began to write Milton's imagination took fire and took control. Everything then was magnified and idealized either into the heroic or the monstrous. Everything was generalized and made representative, so that it is hard to see any connexion between the picture he presented and the world he supposed himself to be picturing. The bishops became in his imagination inhuman monsters of iniquity. And the picture was worked up by one of the most deliberate artists who ever lived and one of the greatest craftsmen in words who ever wrote English. I do not in the least doubt that Milton believed that all he wrote about the bishops and their adherents was no more than the truth. These things being so, it becomes possible to understand how he could write the amazing, absurd and magnificent passage with which he concluded the tract *Of Reformation.* Its last words would be quite horrible if we could suppose that in writing them Milton was really thinking of Laud or Wren or Juxon. But it was not of the actual world that he was then writing, but of one that existed in his imagination alone. The passage is irrelevant to anything that existed; but it is not so well known as it should be, and I cannot forbear quotation.

'And now we know', wrote the great poet, 'O thou, our most certain hope and defence, that thine enemies have been consulting all the sorceries of the great Whore, and have joined

[1] *The Reason of Church Government,* 'The Conclusion'. *Prose Works,* II, p. 502.
[2] *Of Reformation,* ch. VI.

their plots with that sad intelligencing tyrant that mischiefs the world with his mines of Ophir, and lies thirsting to revenge his naval ruins that have larded our seas: but let them all take counsel together and let it come to naught; let them decree and do thou cancel it; let them gather themselves and be scattered; let them embattle themselves and be broken; let them embattle and be broken, for thou art with us.

'Then, amidst the hymns and hallelujahs of saints, some one may, perhaps, be heard[1] offering at high strains in new and lofty measure to sing and celebrate thy divine mercies and marvellous judgements in this land throughout all ages; whereby this great and warlike nation, instructed and inured to the fervent and continual practice of truth and righteousness, and casting far from her the rags of her whole vices, may press on hard to that high and happy emulation to be found the soberest, wisest and most Christian people at that day when thou, the eternal and shortly expected King, shall open the clouds to judge the several kingdoms of the world, and distributing national honours and rewards to religious and just commonwealths, shall put an end to all earthly tyrannies, proclaiming thy universal and mild monarchy through heaven and earth; where they, undoubtedly, that by their labours, counsels and prayers, have been earnest for the common good of religion and their country, shall receive above the inferior orders of the blessed the regal addition of principalities, legions and thrones into their glorious titles, and in supereminence of beatific vision, progressing the dateless and irrevoluble circle of eternity, shall clasp inseparable hands with joy and bliss in over-measure for ever.

'But they contrary, that by the impairing and diminution of the true faith, the distresses and servitude of their country, aspire to high dignity, rule and promotion here, after a shameful end in this life (which God grant them) shall be thrown down eternally into the darkest and deepest gulf of hell, where, under the despiteful control, the trample and spurn of all the other damned, that in the anguish of their torture shall have no other ease than to exercise a raving and bestial tyranny over them as their slaves and negroes, they shall remain in that

[1] Milton's personal appearance at this point is characteristic, if a little unfortunate. He was at the time thinking of writing an epic on the history of England, a project most unfortunately abandoned.

plight for ever, the basest, the lowermost, the most dejected, most underfoot, and down-trodden vassals of perdition.'

It may be said that it matters little or nothing that this passage involves an almost grotesque distortion of the actualities of the moment. I think that Milton himself, though he did not know it, felt that it did not matter. This eloquence refers, not to actualities, but to ideal conditions that one feels might exist, even though they never have existed. It is independent of relevance to any argument. Yet even in relation to the circumstances of the time the passage has significance. For, though no one else could express themselves like this, others, besides Milton, were feeling as he did.

§3. MILTON'S 'PURITANISM'

To the value of these writings of Milton as illustrating politico-religious thought in 1641, there is a serious drawback. He summed up the Presbyterian case against the Laudian Church more fully and with far more power than any one else. But he overstated it. There were many, even among the Puritans, who would not have fully approved his diatribes and maledictions. He can only be regarded as representing extreme views.

Milton has often been considered as a typical Puritan; but it seems gravely doubtful whether he can rightfully be regarded as a Puritan at all, except in some quite superficial sense. Typical he certainly was not. I can find no ground for supposing that he was ever a Calvinist. Almost the only current charge that he did not bring against the bishops was that of Arminianism. It is clear that he was never a true Presbyterian; even though, for a short time, he imagined that what he understood as the Presbyterian system of Church government was the only right one. Within a few years after 1641, he was denouncing the Presbyterians as formerly he had denounced the bishops. His extreme anti-clericalism must, in any case, sooner or later, have separated him from them. Though he moved, then, in the direction of Congregationalism, he never attached himself to any particular sect and could never have brought himself to do so. He was, no doubt, in the fullest sense, an Independent; but it seems impossible to say what, at any

moment, were his positive religious opinions. It seems to me incredible that he can ever really have believed in the childish theology which furnished the dramatic element in *Paradise Lost*. There is no doubt that in his last years his views were of Socinian or Unitarian type. He seems to have been moving in the direction of the formal Deism that was fully developed a little later. I find nothing in his writings to suggest that he was ever afflicted with the Puritan preoccupation with the idea of Hell. If he ever believed in Calvinistic election he certainly never doubted that he was of the elect.

Milton was, of course, a man of austere temperament; and his temperament brought him into some degree of sympathy with the true Puritans. Like them, he was inclined to see dancing and card-playing, and jollification generally, as a silly waste of time. But he thought of such amusement, I imagine, rather as undignified than as sinful. Like the Puritans, he took life and himself very seriously: but that is in no way peculiar to Puritans. Morally he was, no doubt, what is loosely called Puritanic; but neither is that distinctive of Puritans. It is supposed that he admired Shakespeare, but I know of no evidence of his admiration except a very early sonnet. His approval of the stage must have been highly qualified. He approved, of course, of a poetry religious in content and austere in his own sense. But one wonders what he thought of Herrick or of Suckling's *Ballad of a Wedding*, or even of George Herbert.

Milton was first of all and above all an artist; and the ruling passion of his life was his love of intellectual freedom. That love, it is true, was qualified in him by an extreme and arrogant intolerance of opposition. But it was that which made of him the most extreme of anti-clericals. 'Although', he wrote, 'I despise not the defence of just immunities, yet love my peace better if that were all. Give me the liberty to know, to utter and to argue freely according to conscience above all liberties.'[1] For political liberty he indeed cared little, if he can even be said to have approved of it. In this he resembled the Puritans, but with a resemblance merely superficial. The ideal of the State that appears in his later writings is as undemocratic as theirs, but in no sense theocratic. He was a born aristocrat if

[1] *Areopagitica*, 1644. *Works*, II, p. 95.

ever a man was. And his temperamental revolt against any claim or attempt to restrict his intellectual freedom was far more deeply rooted in him, and far stronger, than his belief in any political ideal or any form of Church government or in any church or in any theological doctrine.

Chapter V

THE ERASTIAN POINT OF VIEW

In the November of 1641, in a treatise entitled *The True Grounds of Ecclesiastical Regiment*, Henry Parker expounded a theory of the relation of Church to State that was uncompromisingly 'Erastian'. Born in 1604, a younger son of Sir Nicholas Parker of Bolton, in Sussex, he had graduated at Oxford and been called to the bar. He was already known as one of the ablest publicists of the day; and his fame was to culminate with the publication, in 1642, of the celebrated *Observations*, which led to so much controversy. He had already published tractates dealing with ship-money and with certain aspects of the Church question. These latter exhibit and express the Erastian point of view very distinctly and emphatically. But it was only in the *True Grounds* that Parker argued the question fully. What his religious beliefs may have been it is not possible to know. 'I neither merit the name of Puritan', he says, 'neither do I hate them so as to profess myself an anti-Puritan.'[1] Quite certainly he was no sort of Puritan. His *True Grounds* is distinguished among the writings of the time by its coolness in statement and argument and by a total lack of virulence and passion. He abused no one; he referred to Hall's views on episcopacy without any acrimony and summarized them fairly. He was, as he says, 'no favourer of extremes'. For all that, his Erastianism was nearly as extreme as possible.

'They are equally mad', said Selden, 'who say that bishops are so *jure divino* that they must be continued, and they who say they are so anti-christian that they must be done away. All is as the State likes.'[2] Parker entirely agreed. Episcopacy, he declared, is perhaps a better form of Church government than some others and certainly better than none at all, but it cannot reasonably be held to be necessary. Order and

[1] *Discourse concerning Puritans*, 1641, p. 4. If this were not written by Parker, some one else must, at this time, have been expressing exactly his ideas and quite in his manner.

[2] *Table Talk*, ed. Reynolds, No. 8, p. 26.

discipline in the Church can be maintained by the King's courts without any help from bishops. He treated the question as one of mere expediency.[1] With Hall's argument from Scripture he did not think it worth while to deal. As to argument from the early history of the Church, he declared that it did not matter what form of Church government had then existed. The Church, he pointed out, was then forced to make itself independent of a hostile State. Conditions have changed so much that to argue from then to now is absurd.

Parker's main argument was based upon two assertions which he did not clearly distinguish. 'The use of power', he wrote, 'is not to entreat or persuade only, for these may be done without power, but to command; and commands are vain without compulsion and they which may not compel may not command; and they which cannot command may not meddle at all except to entreat or persuade. Power, then, there must be, and that power must be somewhere supreme, that it may command all good and punish all evil, or else it is insufficient; and if all, then in religious as well as in civil cases. . . . If Peter may do more than persuade Nero, the sceptre is Peter's, not Nero's. . . . But in whethersoever the power of commanding rests, it cannot rest in both, the sceptre cannot be shared, independence cannot be divided, the people cannot obey both as equal judges whilst their judgements remain contrary. . . . That power which is proper must include not only right of commanding, but also an effectual virtue of forcing obedience to its commands. . . . The supreme civil magistrate has this power, grounded upon the common consent of mankind; and as strong as is the political consent of human nature in its supreme law of public conservation, so vigorous and invincible is the power.'[2]

Two different propositions and two distinct lines of argument seem here to be rather confusingly blended. There is, first, the argument from the nature of sovereignty. In every State there must needs be some authority that is supreme in all causes whatever, religious or civil. 'Except one supreme head', Parker wrote elsewhere, 'be alone in all causes, as well ecclesiastical as civil, human nature must needs be destitute of those

[1] See especially, *The Question concerning the Divine Right of Episcopacie truly stated*, 1641. B.M. E. 162 (4).

[2] *The True Grounds of Ecclesiastical Regiment*, 1641, pp. 23–5.

remedies which are necessary for its conservation, since power cannot be divided . . . and being diminished it proves insufficient.'[1] If it were true that bishops have inherited the whole power of the Apostles, nothing would be left of civil authority. The civil magistrate must either be supreme in all causes, or he will lack power sufficient to fulfil his function of promoting all good and suppressing all evil.

It may be noted here that, in a treatise of 1645, Parker gave another reason for this necessity. 'Union and unity', he declared, are required for the safety of society, 'and authority is the effectual means of producing and propagating unity and, therefore, whensoever authority is divided',[2] unity is endangered. So, from all this, the conclusion is reached that, however exactly the Church be constituted, the last word in all matters of religion must remain with the State. The Church, as such, can have no authority independent of that of the State and no right of action not derived from the civil magistrate.

Through another assertion and line of argument the same conclusion is reached. There is no such thing, Parker asserted, as a right to command without coercive power to enforce obedience. It being on all sides admitted that the Church has, of itself, no coercive power, it follows that it has no real authority of its own, that is, no right to command. 'The power of the Church and of Churchmen is no more than operative and declarative, not at all authoritative; and having no authority they can have no legislative power of making laws and constitutions. . . . Why should any such thing as spiritual authority be admitted to be, when it cannot be evidenced what execution doth follow?'[3] 'The mere noise of an imaginary spiritual power and sword must not deceive us.'[4] So, centuries earlier, it is said that Pierre Flotte had told the Pope.

Parker's phrases would often seem to imply that he identified right with might. He asserts, again and again, that God never gives authority without giving also coercive power. If I have power to enforce my commands I have a right to give them; if I lose my power I lose my right. Did he mean that the power to coerce actually creates the right? Though in the *True Grounds* he sometimes seems to be saying so, his

[1] *Discourse concerning Puritans*, p. 19.
[2] *Jus Regum*, 1645, p. 17.
[3] Ibid., pp. 11–12.
[4] *The True Grounds*, p. 25.

writings as a whole show that this was not his meaning. He conceived that right to command and power to coerce are alike derived from what he constantly refers to as common consent. Laws, he declared, 'made without common consent, they bind not at all'.[1] If I lose my power it means that there exists no longer that general recognition of my right, without which right and power cannot exist together.

It is merely absurd, Parker asserted, to say that secular Princes can have no spiritual authority. 'All men have a spiritual charge in general'; all are bound 'to promote the worship of God and the salvation of other men'.[2] Above all others, then, Princes must be bound to promote spiritual welfare. There is, actually, he declared, no way of distinguishing absolutely between civil and spiritual causes. But so far as such a thing as spiritual power exists it must belong to the Prince and to him only. There is, indeed, no reason why questions ecclesiastical should not be determined by clerical courts or consistories, as questions of civil law are by lay judges. But in the one case as in the other, the authority by which decisions are given is derived wholly from the Prince.[3] Denial of the absolute supremacy of the law-giver in all matters of religion, is, he declared, the very essence of Popery.[4]

In Parker's view, not only does the Prince, as Hall said, give the bishopric, it is also the Prince who makes the bishop. Power to ordain lies with the King and is delegated by him. 'A priest', said Selden, 'has no such thing as an indelible character. What difference do you find betwixt him and another man after ordination?'[5] Here, if in little else, he and Parker agreed with Milton. It is absurd, Parker declared, to say that power to ordain depends upon the Apostolical succession of bishops. Ordination could have been conferred upon bishops and clergy by 'the sacred hand of Edward VI'.[6] The case, of course, is still the same.

Parker dealt vigorously and even indignantly with the claim that the Prince is normally bound in questions of religion to accept the determinations of a clerical body. 'It were contrary to that interest which every man hath in the truth, that any should be obliged to receive it from other men's mouths without

[1] *True Grounds*, p. 85. [2] Ibid., p. 14. [3] Ibid., p. 40.
[4] *The Altar Dispute*, 1641, p. 64. [5] *Table Talk*, No. 88, p. 113.
[6] *The Altar Dispute*, p. 65.

any further inquiry. . . . The meanest man is as much interested and concerned in the truth of religion as the greatest priest.'[1] God will not hold us excused for anything amiss by trust in our clergy. 'If we will blindly trust others, 'tis at our own peril. He will require it at our hands; but if we will seek industriously we shall find; if we will knock at his door He hath promised to open to us. . . . How much more shall Princes and Courts of Parliament answer for their wilful blindness, if they will depart from their own right and duty, in sifting and examining all such religious constitutions as concern them and all others under their charge. Shall they sit to treat of leather and wool and neglect doctrine and discipline? Shall they consult of the beauty and glory of the kingdom and transfer religion to others, which is the foundation of all happiness?'[2]

It does not seem to have struck Parker that even the meanest man might find it contrary to the interest he has in truth blindly to accept the determinations of Parliament. 'Why', he asked, 'should we think that Princes and Parliaments want power to impose laws upon themselves for the avail of their own souls?'[3] But why, on the other hand, should they impose those laws on others? Parker's belief in the infallible wisdom of Parliament amounted to fanaticism.

Parker was careful to point out that, in England, it is only in Parliament that the Prince's supremacy is absolute. Law can be made only by common consent, and it is only in Parliament that common consent can be expressed and given.[4] On the other hand, there was apparently, in his view, no limit to the power of Parliament to make law concerning religion. Parliament, which includes the King and is, in fact, 'the Prince', must needs have the same power in spiritual as in temporal things. 'It is the same body of men now of which both State and Church are compacted.'[5] A merely clerical body may be actuated by base motives and class interests; but 'the whole body can have no sinister end or interest to blind them.'[6] A community can but seek its own good; it will not wrong itself; and it is the whole community that speaks in Parliament.

In putting the matter thus, Parker was minimizing, if not

[1] *The True Grounds*, p. 84.
[2] Ibid., p. 88.
[3] Ibid., p. 85.
[4] Ibid., p. 91.
[5] *The Question concerning the Divine Right of Episcopacie*, 1641, pp. 3–4.
[6] *The True Grounds*, p. 84.

evading, the main difficulty. He wrote as though it were merely a matter of settling forms of government and forms of worship. But behind that, as he must have known, there lay doctrinal differences of belief and doctrinal questions which, on his theory, must also be settled in Parliament. He held, it would seem, that though Parliament might determine wrongly on such questions, its judgement was more likely to be right than that of any other body. That was not saying much. But for him the whole matter was legal and political rather than religious. He was ready, perhaps, like the Elizabethan lawyers, to assume that Parliamentary determinations were warranted by Scripture. Such a view was already out of fashion. In any case, he certainly held that, right or wrong, it was the subject's duty to accept Parliamentary determinations, doctrinal or other. Laws, he says, 'being made by common consent, they bind all either to obedience or to sufferance. It is God's own law that such as shall except against the validity or obliging virtue of common consent, shall die the death; for no peace can ever be in that State where any considerable party shall not acquiesce in the common statutes of the land.'[1] Yet Parker should, surely, have seen that 'a common consent' expressed by majority votes in Parliament could be little, if anything, more than convenient legal fiction. That would still have been the case even if the Parliament of 1640 had been far more representative than it was. It is, under the circumstances, a little surprising that Parker should have been so completely possessed by belief in the reality of his common consent.

There were others, though very few, who, in 1641, were expressing views similar to those of Parker. 'By God's law', says a pamphleteer, addressing the bishops, 'you have nothing to do with making laws . . . you may teach, you may not command; persuasion is your part, compulsion is the Prince's.'[2] But no other writer than Parker made anything like so complete and logical an exposition of Erastian principles. Very many agreed with his conclusions, but few, perhaps, would quite have endorsed his reasoning. He seemed to think that all that was needed was a recognition that the State could settle religion as

[1] *The True Grounds*, p. 84.

[2] *A Pack of Puritans*, 1641, p. 47. The title is misleading. It is ascribed to Sir Peter Wentworth.

it pleased. The nature of the settlement, apparently, did not matter. Though what Parker actually said does not justify that inference, his *True Grounds* was certainly likely to give the impression that he thought so. At least he regarded the form of Church government as essentially a thing indifferent. To convinced Presbyterians and Congregationalists his argument would have seemed dangerous and his conclusions impious. He swept aside, alike, the arguments of Hall and of Milton.

Yet Parker's view of the question had been current among lawyers ever since the time of St. Germain. It was still held by at least the Parliamentarian lawyers. The same view was expressed by the highly sceptical Selden, and, later, by the Puritan lawyer, Prynne. It may be said, that Parker's idea of the right relation between the State and a national church was substantially that taken by the House of Commons, in 1641. To some of its members, perhaps, his principles would have seemed too absolute and others may have been disturbed by what looked like an identification of right with power. But that the attitude of the House generally was thoroughly Erastian there seems to be no possible doubt. It differed from Parker chiefly in the far greater intensity of its anti-clerical sentiment. In some ways, even, the House went farther than Parker. He had only rather indefinitely suggested that it might be well to abolish episcopacy altogether, because, he declared, bishops tend always to claim an authority independent of the State. By November 1641, the House of Commons had gone farther than suggestion; and the action it had taken in September seemed to imply a claim that nothing in Parker's writings could be held to justify.

Chapter VI

THE HOUSE OF COMMONS

THE attack in Parliament on the existing constitution of the Church may be said to have begun with the presentation, in December 1640, of what is called the Root and Branch Petition from London.[1] It was said to be signed by fifteen thousand people; but the figure is of little importance. The petitions of this time can hardly be taken seriously as evidence of the prevalence of the views they express.[2] Neither the number of such petitions nor the number of signatures attached to them, have any serious significance. All of them, on one side and the other, seem to have been to some extent fraudulent. It appears to have been easy for any person of much local influence to obtain signatures to any kind of petition. And, apart from the fraudulency involved in obtaining by pressure the signatures of ignorant and probably uninterested people, another element of fraud appears to have been present. It is probable not only that the London petition was the work of a small group of people but that other petitions, from other parts of the country, were drawn up by the same, or almost the same, persons. Petitions suspiciously similar were presented from eleven different districts in the course of January 1641. Of one of these, Mr. Shaw remarked that, 'the matter of it is identical, the wording almost parallel, with that of the London Petition'.[3] To send substantially the same petition to different counties for signature, so as to make it appear that different parts of the country were spontaneously demanding the same thing, was an old device. If Clarendon is to be believed, the fraud frequently practised was even worse than is thus indicated. According to him, petitions were materially altered after the signatures had been obtained.[4] An anti-episcopal petition

[1] The text of this is in Gee and Hardy's *Documents*.

[2] I am glad to find that Mr. Tatham considers the evidence of the petitions as 'of very little value'.—*The Puritans in Power*, ch. I, p. 32.

[3] Rev. G. B. Shaw: *History of the English Church during the Civil Wars*, 1900, vol. I, p. 21. The petition referred to was from Kent; which produced another in the contrary sense in March 1642.

[4] *History of the Rebellion*, bk. III.

purporting to come from Cheshire seems certainly to have been an absolute forgery.[1] In any case it is probable that all these petitions represent little more than the views of those who drafted them and those who obtained the signatures.

Nevertheless, the London Petition is interesting as an expression of extreme opinion. That it did represent a good deal more than the views of its promoters is shown by the close resemblance of its content to that of many writings of the time, including those of Milton. The petitioners asked for the total abolition of episcopacy, which has 'proved prejudicial and very dangerous both to the Church and Commonwealth'. They asked that 'the government according to God's word may be rightly placed amongst us'. On their own showing, then, there is to be found in Scripture a form of church government which, *jure divino*, ought to be established. That did not deter them from asserting that the claim of episcopacy to a *jus divinum* is 'derogatory to his majesty and his state royal'.

The petitioners, however, were not concerned to argue either in favour of Presbyterianism or against episcopacy. To prove their point, they were content to denounce the actual bishops; and this they did with consistent extravagance. The bishops were accused of subjecting all clergy to their sole authority 'and so by degrees exempting them from the temporal power'. They were charged with 'the encouragement of ministers to despise the temporal magistracy, the nobles and gentry of the land'. They were declared to be responsible for 'the great increase of idle, lewd and dissolute, ignorant and erroneous men in the ministry' and equally for 'the many schisms, errors, and strange opinions in the Church' and for 'great corruptions which are in the Universities'. The same arguments, it was declared, that support the Pope, support the bishops. Hence it is that they have dared to maintain such abominable opinions as 'that the Pope is not anti-Christ and that the Church of Rome is a true Church . . . and that salvation is attainable in that religion.' It is the bishops also who are responsible for 'the swarming of lascivious, idle, and unprofitable books and pamphlets; as namely, Ovid's *Fits of Love*'.[2] So, also, 'the great increase and frequency of whoredoms and adulteries' is their fault. They teach, it is asserted,

[1] See Gardiner's *Fall of the Monarchy*, II, p. 189, note. [2] Is this the *Ars Amatoria*?

that the subjects have no propriety in their estates, but that 'the king may take from them what he pleaseth . . . that all is the King's and that he is bound by no law'. It seems hardly credible, but it is the fact, that the bishops were made responsible for monopolies, increase of custom duties and ship-money. After all this, it is mere matter of course that the petitioners should charge the bishops with Romanizing and 'pleading' for the profanation of the Lord's Day, and that they should complain of the railing off of the communion table and the consecration of churches.

That the House of Commons took this seriously is a fact of greater significance than anything in the document itself. In the debate upon it, in February 1641, it seems that no one but George Digby had the candour, or the courage, even to allude to its obvious exaggerations and gross absurdities. But not even Digby had a word to say for the bishops. If there were any adherents of the High Church party in the House, they remained silent. Nor did the House show any understanding of the Laudian position. It would seem to have imagined that no one could honestly take it. Even Falkland charged the bishops with introducing superstition and with having 'defiled our Church by adorning our churches'. Some of them, he declared, had deliberately tried to establish a dark night of ignorance in which to sow the tares of Popery. They had endeavoured, he said, 'to destroy as much as they could of the Gospel, without bringing themselves into danger of being destroyed by the law'. They had plotted against the liberties of the kingdom and aimed at obtaining power 'to dispose as well of every office as of every benefice'.[1]

But, in spite of its generally sympathetic attitude towards the petition, the House as a whole showed, at that time, no inclination either to abolish episcopacy or to set up a Presbyterian system. George Digby declared roundly that to establish Presbyterianism would be to set up 'a Pope in every parish', and to lay foundations for the 'supremacy of ecclesiastical jurisdiction'. It is easier, declared Sir Harbottle Grimston, to reform what is amiss, than to set up a new form of government, without knowing 'how it would suit either with the humours

[1] This speech of February 8th was printed the same year. It is given in J. A. R. Marriott's *Life and Times of Lucius Cary.*

of the people or with the monarchical government'. It may be, he added, that this new government, 'if it be brought in upon the grounds and foundations which some would have it, it will be out of our power ever to master it again'. The House knew enough to see danger in the claims made for Presbyterian churches. 'Whilst we are earnest to take away innovations', said Sir Benjamin Rudyard, 'let us beware we bring not in the greatest innovation ever was in England.' Falkland pointed out that episcopacy was perfectly compatible with such an Erastian establishment as the House desired. It should be easy, he said, to tie up the bishops so tightly by law that they would 'not dare either ordain, suspend, silence, excommunicate or deprive otherwise than we would have them'. The whole question, he declared, is simply one of convenience: episcopacy is neither necessary nor forbidden to us. Later, in his speech on the Root and Branch Bill,[1] he argued that Presbyterianism is more dangerous than episcopacy to secular supremacy. Even more explicitly than the bishops, he pointed out, did the Presbyterians claim that their system exists *jure divino*. They claimed for their assemblies power to excommunicate whom they pleased, 'even Parliaments'. It is vain, he argued, to say that they claim only a power in things spiritual. For spiritual power includes temporal power, and they claim that it is for the Church itself to say where the spiritual ends and the temporal begins.

Clarendon states that in the two Houses of Parliament there were at this time only three men who desired the establishment of Presbyterian government in the Church: William Fiennes, Lord Say and Sele, his son Nathaniel, and Henry Vane. The word Presbyterian had already, in 1641, begun to be used in England simply of those who, desiring to maintain an all-inclusive national Church, yet wished to abolish episcopacy. It seems very unlikely that, even at the beginning of that year there were, in the two Houses, only three Presbyterians in this sense. But it is at least doubtful whether there were even three who wished to establish in England the Presbyterian system of Scotland or Geneva. Nathaniel Fiennes seems to have been as Erastian as Falkland. He argued that if the place of bishops

[1] This seems to have been printed for the first time in 1660, along with the econd edition of Falkland's *Discourse of the Infallibility of the Church of Rome.*

were taken by royal commissioners, 'this were an abolition of episcopacy and yet not diminution of monarchy'. As to Vane, whatever he was, he was certainly not an orthodox Presbyterian. He proposed in June of this year that State appointed commissioners, half of them laymen, should take the place of bishops in each diocese.

The House of Commons in 1641 had to deal with a relatively new religious movement which had become strong among the clergy and in the Universities and which, though very weak elsewhere, had won the support of the King and so been able to get possession of most of the key positions in the Church. Falkland gave it as a reason against attempting the establishment of a Presbyterian system that, if required to declare episcopacy unlawful, most of the more learned clergy would have to be deprived. But the House of Commons saw the High Church party as Popish and as tending, at least, to weaken the national resistance to Romanism. It resented the claim to a higher status for the clergy and it resented, still more, the claim that Convocation could alone, with the King's assent, make law for the Church. In that claim it, quite reasonably, saw a danger of the clerical domination it detested the thought of. It feared the political influence of the High Church clergy and was alarmed by the political importance acquired by certain of the bishops. It saw the voting power of the bishops in the House of Lords as dangerously obstructive. It seems really to have believed that the bishops were encroaching on the rights of the common law courts, and that they aimed at freeing the clergy from all jurisdiction but their own.

Along with all this there seems to have been a belief in the existence, behind the High Church movement, of a vague and vast Catholic conspiracy to destroy English Protestantism and overturn the constitution. 'I am truly persuaded', Pym declared, in May, 'that there was some great design in hand by the Papists to subvert and overthrow this kingdom.' Whether he himself believed or not in the reality of the danger, he counted on the House believing in it. To that design it was at least half believed that Laud was a party. 'We charge the prelatical clergy with Popery to make them odious', said Selden, 'though we know they are guilty of no such thing.'[1] There was

[1] *Table Talk*, No. 108.

a good deal of truth in that remark; but also, no doubt, there were many who really believed the charge to be true. In February the House accused Laud of having 'traitorously and wickedly endeavoured to reconcile the Church of England with the Church of Rome' and 'for the effecting thereof', of having 'kept secret intelligence with the Court of Rome'. 'It is a miserable abuse of the spiritual keys', Pym proclaimed, in presenting to the House of Lords the articles of impeachment, 'to shut up the doors of Heaven and to open the gates of Hell, to let in profaneness, ignorance, superstition, and error.' And, with what seems astonishing effrontery, 'I shall need say no more', he continued; 'these things are evident and abundantly known to all'. It may be pointed out that though hatred and fear of Catholicism may be born of religion, they do not, of themselves, constitute religion. An Erastian and anti-clerical attitude is as likely as not to be positively irreligious. It appears to me quite evident that, in 1641, the House of Commons was thinking politically and not religiously.

The action of the House was far more significant than any words spoken in it. One of its earliest acts was the passing, in December 1640, of a resolution that the clergy, 'in Convocation or otherwise, have no power to make any constitution, Canons, or acts whatsoever in matter of doctrine, discipline, or otherwise, to bind the clergy or the laity of this land without the common consent of Parliament'. It was a resolution of great constitutional importance, but it did not necessarily imply a religious point of view. In January 1641 the House voted agreement with reasons formally stated for excluding bishops from the House of Lords. In March it resolved that it was prejudicial to the commonwealth that any clergyman should serve on the commission for the peace, or sit as judge in any civil court or hold any temporal office under the Crown. In May it produced the much criticized 'Protestation'. This was to be 'tendered to the whole kingdom' with the warning that whoever refused it would be regarded as 'disaffected to the Parliament'. Those who made it vowed that they would, with all their power, defend 'the true Reformed Protestant Religion, expressed in the doctrine of the Church of England, against all Popery and all Popish innovations . . . as also the powers and privileges of Parliament'. When men asked, as did Henry

Burton, what was meant by the true Reformed Protestant religion, the House informed them that the words had no reference to the form of Church government or to forms of worship or even to the Thirty Nine Articles. They referred, it appeared, only to the doctrine of the Church, 'so far as it is opposite to Popery and Popish innovations'. It would hardly be possible to imagine a 'religion' more entirely negative.

But by May 1641 the temper of the House had to some extent altered. However few there may have been who, in early February, desired to abolish episcopacy, there were now many more. In May was introduced a Bill for its root and branch abolition. It was already probable that the Lords would refuse to exclude the bishops from their House; it seemed that only total abolition could remove the obstacle. What made the position more serious was the growing distrust of the King that was largely due to rumours of 'army plots' and of his foolish semi-connivance in those futilities. Distrust of the King's intentions necessarily increased fear of the bishops who were his nominees.

Yet more serious considerations tended towards the same result. To some extent, at least, financial necessities supplied motive for the Root and Branch Bill. The seriousness of the financial position had begun to be painfully apparent. Large sums were required for the paying off of the Scottish and English armies on foot; and taxation threatened to rise indefinitely. By August, indeed, 'never within the memory of man', says Gardiner, 'had the country been called upon to bear such a pressure of taxation'. The danger to the reform party involved in such a state of things is obvious. Confiscation of the property attached to bishoprics and cathedral chapters would at least help to meet the bills that were coming in.

Distrust of the King must, also, have assisted the realization of a danger that was perhaps the most serious of all. His power to appoint bishops had tended in the past, and did necessarily tend, to make of the clergy instruments of propaganda for the extreme claims of the Crown. As early as February Nathaniel Fiennes had laid even exaggerated stress on the danger. If, he argued, the bishops are allowed to retain their present power over the parochial clergy, 'we know what an influence they will have by them upon the people'. They will be able to

'bring in what religion they please' and 'reduce us into what slavery they please'. It was probably realization of this actual danger that was, in the long run, the determining factor in the attitude of the majority in the House. The struggle for the control of the pulpit for political purposes, foreshadowed long before, was about to begin in deadly and conscious earnest. The close connexion, at this time, of religious and political conceptions, inevitably made of the pulpit an organ of political influence.

The government of James I had show appreciation of this fact when, in 1623, the King had forbidden preachers to define the authority and duty of sovereign princes further than was done in the Homilies and Articles of the Church. Fuller remarked that it was generally observed that those who held the helm of the pulpit could steer men's hearts as they pleased.[1] 'By referring the form of prayer and matter of doctrine to each man's discretion', wrote Thorndike in 1649, 'the exercise of religion is turned into a lecture of State, infused into the conscience of the hearers, by desiring of God the interests of that faction for which a man preaches.'[2] Extempore prayer, like preaching, could be turned to political purposes. Desire for the establishment of a Presbyterian or Puritan preaching ministry did not, in 1641, necessarily imply any religious purpose whatever.

It was not Scottish Presbyterianism, or anything really like it, that was to be established under the Root and Branch Bill. In the form the Bill finally took in July, it provided that nine lay commissioners, named in the Bill itself, should take over all ecclesiastical jurisdiction. It was just against such arrangements that Presbyterians had always protested, from the time of Cartwright onwards. That the Bill split the House into opposing parties for the moment is a fact perhaps symptomatic but of little practical importance. One party wished to retain bishops as depositaries of the Crown's ecclesiastical jurisdiction, to be exercised under strict parliamentary regulation. The other would have placed that jurisdiction in the hands of lay commissioners appointed by the Houses. Both were equally Erastian and neither was Presbyterian in any real sense.

Small as appears to have been the theoretic difference

[1] *Church History*, IX. [2] *Right of the Church*, 1649, ch. V, p. 330.

between the two sections, the breach must have been seriously widened by the action taken a little later. Resolutions adopted by the House on September 1st, took the form of peremptory orders addressed to parochial clergy and churchwardens generally. It was ordered 'by the Commons in Parliament' that, in all churches, the communion table should be removed from the east end and its rails 'taken away'; that all crucifixes, pictures representing persons of the Trinity, and images of the Virgin should be 'abolished'; that all bowing towards the east or at the name of Jesus should be forborne; and that all 'dancing and other sports' on the Lord's Day should be forborne and restrained. Certificates of obedience or disobedience to these orders were to be sent in to the House.

All, except perhaps the last, of the things thus proscribed were associated by the Commons with Popery. But it is not the substance of the orders that is important. On what grounds did the House claim power to issue them? The House itself does not seem to have known. It may be said, without irony, that its majority seems to have confused law with what it thought law should be. Most, perhaps, of its members imagined that they were merely ordering that existing law should be enforced. Even so how, it might be asked, had it become the business of the House of Commons to take direct action for the law's enforcement? Even on the theory, soon to be formulated, that the two Houses together formed a supreme court with power of declaring law in general or deciding, when doubt arose, what the law was, such action as was taken could not be justified. Logically implicit in the orders given is a claim that the House of Commons, acting alone, can decide what is law for the Church. The Houses, said a pamphleteer of 1642, are only gradually revealing the full extent of their authority, lest the people should be unable to digest the whole truth at once.[1] The revelation was beginning to be made. A claim to full sovereignty for the Commons was not very far off.

In sermons printed by order of the House in July 1641,[2] Thomas Case, 'minister and lecturer', had exhorted its members to reform everything. 'Reform the Universities,' he cried,

[1] *A Discourse between a Resolved and a Doubtful Englishman*, December 1642.
[2] *Two Sermons lately preached at Westminster*, July 1641. B.M. E. 165 (8).

'reform the cities, reform the countries; reform the Sabbath, reform the Ordinances, the worship of God . . . the Lord help you.' Help was certainly needed. 'Leave us not, I beseech you', he urged them, 'an High Place in the land, leave us not one house for Baal, not an utensil of idolatrous worship, leave us not a rag of the Whore of Babylon; the plague may lie in it.' In an earlier sermon he had exhorted them to beware of 'carnal reason'. But it was just by carnal reason that the House seems to have been guided.

'Let Religion', said Rudyard in November 1640, 'be our *primum quaerite*, for all things else are but etceteras to it.' Sir Benjamin's utterance may well have been sincere; but in the proceedings of the House of Commons in 1641 there is little sign of any but conventional religion, and of anything that should be called Puritanism I find hardly a trace. The action taken either expressed mere detestation of anything it associated with Romanism or had a political purpose. The House was to some extent united in animosity towards the High Church party; but that animosity was largely political. It was united in the fear and hatred of what it called Popery; but that was hardly religious. It was united in its Erastianism; but that was compatible with irreligion. From the earliest days of the Long Parliament onwards there was much talk of an intended religious reformation; but such talk seems to have been curiously empty. It would seem that by reformation the House meant only the forcible suppression of what it regarded as Popery. It talked, it is true, of getting rid of pluralities and providing due maintenance for a preaching clergy. But of how that was to be done it seems to have had no idea, unless it was to be by robbing Peter to pay Paul. Even at the end of 1641 the majority in the Commons appears to have had no definite notion of what it wanted. It is significant that in the declaration on Church reform, issued in April 1642, the one positive proposal was the establishment of 'learned and preaching ministers with a good and sufficient maintenance throughout the whole kingdom'. That project had an evident political purpose. It is clear that the action taken produced, and could produce, little but confusion. If any religious reformation were possible it could only come through tolerance and a cool appreciation of facts. But the dominant party in the House

had no intention of establishing any kind of legal toleration. 'It is far from our purpose', they proclaimed, 'to leave private persons or particular congregations to take up what forms of Divine Service they please; for we hold it requisite that there should be throughout the whole realm a conformity to that order which the laws enjoin according to the Word of God.'[1] Though much of it was no doubt sincere, the talk about a religious reformation was entirely futile. Even victory in war would not enable the Commons to effect any real religious reform or even to establish order in the Church. Among those followers of Parliament who, religious themselves, really desired religious reformation, there was no agreement as to what was wanted. That fact was to become more and more apparent.

[1] *The Grand Remonstrance*, 184.

PART VI
THE COLLAPSE OF GOVERNMENT

Chapter I

PRELIMINARIES

Social and political development under the Tudors had prepared and to some extent made inevitable the constitutional conflict that followed the death of Elizabeth. The conflict over religion and the Church arose equally from the situation at the end of her reign. There was now developed a somewhat indefinite theory of regal power or prerogative, based on Tudor precedent. It was connected sometimes, and always indefinitely, with notions of divine right in the King and with a conception of monarchy as the only form of government divinely approved. Over against it was set the hardly less indefinite theory of the constitution upheld by the House of Commons. In the background, barely perceived, was the question as to who was to have the final word in the direction of public policy.

The opposition to the religious movement of thought and the opposition to the royalist theory of the King's position coincided. The classes opposed to the one were also opposed to the other. But, actually, the crisis of 1628 was primarily brought about by dissension over foreign policy. This is in itself significant of the fact that the real question at issue concerned the power to direct public policy. It was the fumbling and ineffective action of the King and the ignorance of the House of Commons that led to the forced loan of 1627 and so to the Petition of Right. In 1629 the position was such that Charles might fairly claim that he was driven to govern without Parliament. Parliament, through ignorance and prejudice, intolerance and illusion, had assumed an obstructive attitude that made it useless for the time. But the declaration issued by the King in March 1629 put the Crown's case so inadequately that it is scarcely worth mention.

The dominant and actually ruling classes in town and country were determined to put an end to arbitrary action by the executive and were semi-consciously resolved to control public policy. It could quite fairly be argued that the law of

the English constitution was still what it had been under Elizabeth. Charles I could fairly claim right to do such things as Elizabeth, unopposed, had done. But the legal argument was only ideally relevant. It was impossible to govern for long against the opposition of the classes who had local government in their hands. It might be said that Charles wrecked his position by obstinate adherence to what it was logical to regard as his legal rights.

To speak of the years that followed the dissolution of 1629 as 'the eleven years' tyranny', does gross injustice to the government and misrepresents the position. After the death of Buckingham the government seems to some extent to have initiated a new policy. Administration was in various respects improved. A serious attempt was made to give protection and justice to the wage-earning classes. That effort involved more or less drastic interference with actual local government and attempts to regulate wages and prices. In 1631 permanent royal commissioners were appointed to supervise poor relief. Their function was to see to it that the Poor Law was administered to the advantage of the poor. It has been estimated that Poor Law administration was never again, till the nineteenth century, so efficient in that sense as in the years that followed.[1]

But the most important effect of these well-intentioned efforts was to antagonize further the only classes that politically counted. For it was just against the landlords and the more or less rich trading class that wage-earners and tenants needed protection. Landlords and farmers and ruling town oligarchies alike resented the interference of the government. Its action became for them an additional reason for depriving the King of his power of initiative and decision in matters of public policy.

In attempting to govern without Parliaments, Charles was trying to govern in opposition to the classes upon which in the long run his revenue depended. From the first he was forced into financial expedients which at best were mere makeshifts. Not only were they radically insufficient, but they further irritated the very classes he needed to conciliate. Such expedients were necessities of a false position and could not for

[1] See Miss E. M. Leonard's *Early History of English Poor Relief*, and Miss R. R. Reid's *The King's Council in the North*, p. 457.

long maintain it. Sooner or later financial breakdown was certain, unless some means of regular taxation could be found. Ship-money was not conceived as such a means; but it might, it seemed, become so. Its imposition and extension completed the alienation of the dominant classes.

Perhaps of all the effects produced by the levy of ship-money, the most practically important, in the long run, was the alienation of the sea-ports. It does not appear, however, that it need have been so. Behind the ship-money writs was a large and sound conception of naval policy in general, and a perfectly correct perception of the importance of ridding the sea-ports of the piracy that was their main practical grievance. Strafford's success in policing the Irish Sea shows how much might have been effected on the larger scale. Had the Channel been cleared of pirates it is possible that the sea-ports, excepting London, might have been won over. From the point of view of the overseas trader, ship-money was a trifle in comparison with piracy. It was singularly unfortunate for Charles, though it was his own fault, that there had been no improvement in the administration of the Navy. As things were, gross corruption and inefficiency in detail made the ship-money fleets practically useless. The sea-ports had to pay for nothing. Still more hardly hit than the merchants were the unhappy sailors impressed for service in the King's ships, half starved on board and ill paid, if paid at all. There was certainly no Puritanism among the sea-faring population and probably no ideas at all about the legality of ship-money. Yet it seems that in 1642 no class was more violently hostile to the government than were the common sailors. So it was that, at the critical moment, the King's ships came under the control of Parliament. That fact had little positive influence on the course of the war. But had the Royalists retained effective control of the Navy its use might well have proved decisive.

In the actual circumstances, the folly of the government in risking and provoking a war with the Scots seems almost incomprehensible. Even the puniest war was obviously likely to produce collapse. Strafford was called in too late, and even then his advice was not taken. After the dissolution of 1640 the position rapidly became desperate. With the meeting of the Long Parliament fell the Tudor monarchy.

But, perhaps, even then, a reconciliation was not impossible. The King had to face a more or less exasperated upper class holding the local machinery of government in its hands, and the mass of the available wealth of the country, and exercising one way and another enormous influence with the class below. It was, in any case, easy for them to frighten the ignorant masses with talk, either sincere or insincere, about Popery. It was at least as easy to arouse their dislike of any sort of taxation. There was, for the moment, nothing that the King could rely upon or appeal to, except a traditional respect for the monarchy. His army, certainly, could not be relied on: it had already proved its uselessness in face of the Scots. So long as the Scots army was in England the King was helpless.

What should he have done? In a letter written to Henry Jermyn in 1640, Sir John Suckling, with remarkable acuteness, pointed out the only right line to take. It was not enough, he said, that the King should merely yield to the demands that would be made of him. What, above all, he had to do was to dissipate distrust in him. To do that he must give before he was asked to give, and he must convince the Houses that he gave willingly. He had, in fact, to correct his fundamental mistake and honestly set to work to adapt the constitution to the new conditions. Could it have been done? Perhaps it could not; or perhaps it would have been possible for such a man as Henry IV of France had been. But no such thing was possible for Charles I, who with considerable intelligence and many fine qualities, had little adaptability or constructive imagination or insight into men.

Chapter II

THE FIRST SESSION OF THE LONG PARLIAMENT

THOUGH it is true that a tendency to revolutionary claims and action appeared earlier, yet on the whole the action of the Long Parliament, up to September 1641, was a logical sequence of its attitude in 1628. The presence of the Scots army in England, up to August, made it practically impossible for the King to refuse the demands made. The Triennial Act, the Acts for the abolition of the Star Chamber and the Council in the North and of the High Commission, the Act declaring ship-money unlawful and cancelling the judgement in Hampden's case, all expressed that conception of the constitution which the Commons had maintained in 1628. They evinced no more, except a determination to establish it firmly with safeguards. Yet there was a certain difference between the temper and attitude of the new Parliament and that displayed in 1628. Both the similarity and the difference are revealed perhaps most clearly in the proceedings against Strafford.

Strafford, it may be remarked, has begun to receive the honour that is his due. The notion that he sold himself to the King for a bit of ribbon, never even plausible, has long been exploded. He had taken a leading part in securing the protestation of 1621; he had strongly asserted the right of the House of Commons to freedom of speech and criticism; he had refused to pay the forced loan in 1627 and had suffered, in consequence, a short imprisonment; he had been largely responsible for the content of the Petition of Right; he had even agreed with Pym that English law knew nothing of 'sovereign power'. In all that, there was nothing that was inconsistent with his later action or attitude. He had refused to pay his share of the forced loan, not because he denied that a real emergency would justify such a levy, but because there was, evidently, no real emergency. No more than Laud would he admit that any pretended necessity could justify such an imposition. There seems to be no ground whatever for supposing that he wished

to see 'absolute' monarchy established in England. A man only too strictly practical, he entertained no such chimerical project. He was bent on securing just and efficient government, and his political theory, so far as he indulged in theory, would seem to have been substantially that of Francis Bacon. He would probably have endorsed, not its conclusion only, but every word of Berkeley's Hampden judgement.

His administration in Ireland and, in lesser degree, as President of the Council in the North, had been a continuous struggle against the most gross corruption, rascality, injustice, and oppression in high places.[1] Drastic and arbitrary as was often his action, it seems yet to be true that such people as the Earl of Cork and Lord Mountnorris, Lord Eure and Sir David Foulis, were allowed to escape only too easily. But that they were not treated simply as criminals was not his fault.

That the main contention of the House of Commons in the early months of 1641 was that which it had been in 1628 appears clearly in the records of Strafford's trial. The main charge against him, and the only one that properly concerns us here, was that he had 'traitorously endeavoured to subvert the fundamental laws and government of the realm . . . and instead thereof to introduce an arbitrary and tyrannical government against law'. Underlying the whole argument of the prosecution on this count is an assumption of the existence of an ancient, fully recognized, and unquestioned constitution of government in England. To prove their point the Managers of the impeachment were clearly bound to explain fully what were these fundamental laws of the constitution. They were too sure, it seems, or too prudent, to attempt the feat. It was Strafford's object, Maynard said, to 'take away the fundamental, the ancient laws'. He offered no explanation. On this all-important head, the meaning of the indictment remained to the end obscure. All through the trial the speeches of the Managers assumed what they had to prove.

But a certain difference between the attitude of 1641 and that of 1628 is also apparent. By 1641 fear and exasperation had produced distorting and obscuring passion. It should have been obvious that to hold that, during the Tudor period, the

[1] See especially Miss R. R. Reid's *The King's Council in the North*, and Lady Burghclere's *Life of Strafford*.

King had acquired powers that had become a part of English constitutional law was a quite rational opinion. It should have been glaringly obvious that to maintain a conception of the constitution that had been orthodox under Elizabeth, could not, however far mistaken, possibly be treason.

But it seems that, now, Eliot's belief that to differ seriously with the House of Commons was to be a traitor, had become the belief of the House. This is what the speeches of the Managers constantly implied. They seem, indeed, to have seen that Strafford was not guilty of treason in any ordinary sense. 'It is a treason', said Maynard, 'not ending and expiring in one single act . . . but a habit, a trade, a mystery of treason.' And to the end, in fact, it remained mysterious. 'If this treason', declared Pym, 'had taken effect, our souls had been enthralled to the spiritual tyranny of Satan; our consciences to the ecclesiastical tyranny of the Pope; our lives, our persons, and estates to the civil tyranny of an arbitrary, unlimited, confused government.' Whether or not he really believed this he would seem to have mistaken assertion for evidence. His final speech on the impeachment was a denunciation of tyranny in general and an indictment of Strafford's supposed opinions. It is almost completely irrelevant unless on the supposition that it is treason to disagree with Pym about the King's constitutional position.

It might well seem strange that, even under the influence of fear and resentment, any one could honestly take that view. But it must be remembered that behind the Managers was, at least, a very large majority of the House of Commons and, behind that, a large majority of the classes the House mainly represented. It was possible to believe that, on the other side, there were only dishonest courtiers and hypocritical, papistical clergy and the Earl of Strafford. Indeed, except for the delusion as to the dishonesty of the Laudian clergy, for which there was no decent excuse, this estimate of the position seems to have been substantially correct at the moment. If you add the fiction that the House of Commons expressed the judgement of the whole people of England, you have all that is needed to explain the phenomenon.

The Managers of the impeachment talked as though Strafford had indulged a fond hope of abolishing all law and substituting

for it the mere will of a King. They spoke as though they imagined a sane despot would not govern by the law he made. What, otherwise, is the relevance of Pym's eloquence concerning law in general. 'The Law', he said, 'is that which puts a difference betwixt good and evil, betwixt just and unjust. If you take away the law, all things will fall into confusion, every man will become a law unto himself, which, in the depraved condition of human nature, must needs produce many great enormities. Lust will become a law and envy will become a law; covetousness and ambition will become laws.' Did he mean that there is nothing either good or bad but the law makes it so? Whatever his rhetoric meant, truism or nonsense, it is totally irrelevant to the issue; unless it was meant to suggest that Strafford's object was to bring about anarchy.

The unwelcome fact must be admitted that the conduct of the impeachment was marked at every stage by an unscrupulousness amounting to roguery. Every kind of shameful gossip and slander was made use of to create prejudice. Men who might have borne witness in favour of Strafford were disabled by a pretence of impeachment from coming forward. Lord Mountnorris and Sir David Foulis were summoned to give what the Managers called evidence. An attempt was even made to deprive Strafford of the services of counsel on points of law. Pym declared that the Earl had put into his own pocket most of the increased revenue from Ireland. 'And when he hath spoiled and ravined on the people, he hath been content to yield up some part to the King.' Such a statement could have no sort of justification unless followed up by a mass of direct evidence. There was none at all. That Strafford had saved the Church in Ireland from something near practical extinction by forcing robbers to disgorge some of their plunder could hardly be denied. 'But', said Pym, 'I hear nothing of spiritual edification. They that strive not to build up churches in a spiritual way of edification, let them build all the material churches that can be, they will do no good. God is not worshipped with walls, but he is worshipped with hearts.' But he made no attempt to show the relevance of this sanctimonious assertion of what nobody would have denied.

No real attempt was made to substantiate most of the charges. They seem, like the speeches of the Managers, to have been

designed to create prejudice and mislead the ignorant. The indictment as a whole appears to have been drawn up on the principle that, if you throw a great deal of mud, some of it will stick.[1] Charge after charge had to be 'waived' and practically withdrawn. The breakdown of the case for the prosecution could hardly have been more complete.

In the debate on the third reading of the Bill of Attainder, George Digby, one of the Managers, honourably disassociated himself from his colleagues. 'He that commits murder with the sword of justice', he warned the House, 'heightens that crime to the utmost.' His speech, incidentally, was grossly unjust to Strafford. But its main contention was unanswerable; a fact which accounts for the unrighteous indignation it excited. It was absurdly and ominously declared to be a breach of privilege. Few things illustrate so well the temper of the House as a whole, as the reception given to this speech and the malignity with which Digby was thereafter pursued.

Oliver St. John, another of the Managers, declared, on the other hand, that for passing a Bill of Attainder 'private satisfaction to each man's conscience is sufficient, although no evidence had been given at all'. His conscience, apparently, could be satisfied without evidence. Later he stated the matter more frankly. 'It is true we give law to hares and deer, because they be beasts of chase; but it was never accounted cruelty or foul play to knock foxes and wolves on the head as they can be found, because they be beasts of prey.' As Clarendon remarked, his law and his humanity were alike.

To say that the charges against Strafford were unjust and untrue, and that the prosecution was conducted with a disgraceful disregard of truth and of justice, is an accurate statement as far as it goes. But it is an incomplete statement and is far too simple.

It has been suggested that Pym and the other leaders of the House, in their degree, were actuated in this affair, mainly by fear for themselves. Those of them who had been guilty of technically treasonable correspondence with the Scots had certainly reason to fear prosecution. But whatever amount of truth there may be in this, it goes very little way towards

[1] A particularly bad case is Art. 13 of the indictment, which concerns Strafford's measures on behalf of the flax industry.

explaining what happened. It is not the action of Pym, or of any other individual, that has to be explained, but that of an almost unanimous House of Commons. Fear of the strongest man the King had with him was, no doubt, a factor in the action of the House. But in by far the most of its members it was certainly not fear for themselves.

Passion is unscrupulous and unjust; but the passionate feeling that moved the House was not ignoble. It believed that Strafford had deserted and betrayed the cause of public right and liberty. Though the miserable shuffling of the elder Vane should have discredited his evidence, it believed that Strafford had advised the King to use the Irish army to crush resistance in England. It believed, even, that he was responsible for the dissolution of the Short Parliament. It saw in his conduct 'one wrong more to man, one more insult to God'. It had no good ground for any of these beliefs, yet it must be admitted that the facts as known to the House were capable of such interpretation.

Then, too, the House seems to have seen Strafford as a man whose influence with the King might make impossible the peaceful constitutional settlement it desired and England needed. So long as he lived, it seems to have thought, no safeguards would prove sufficient and no settlement lasting. The House was conscious that a crisis had come; it was conscious at once of opportunity and of danger. So, to secure the firm establishment of constitutional and parliamentary government, Strafford must be got rid of. This was no time, as St. John indicated, to consider niceties of law. Neither imprisonment nor banishment would give security sufficient. Stone dead hath no fellow. The argument is one that might be held to justify any political assassination, alleging public good as its object. But of that the House was certainly unconscious. It felt no doubt that, technically treasonable or not, Strafford's conduct had been criminal.

'In all disputes, so much as there is of passion, so much there is of nothing to the purpose.' Pym's rhetorical exaggerations and irrelevances may be regarded as merely expressing the strength of the feeling that had been aroused. It was unfortunate for justice that it should have found a focus in Strafford. It is hard to suppose that the Managers of the

mpeachment meant or believed all they said. But certainly they vere not merely trying to create prejudice. They felt that they ıad a real case, even though it could not be expressed in terms ›f law. What they were really saying was that the rule of law s necessarily and seriously endangered by any claim or power o overrule or disregard it, and that recognition of such a claim vould render all rights and property insecure. Eliot in 1628 ıad said the same. It was the essential contention of the Commons, in 1641 as in 1628, that the whole fabric of society, .ll property and every man's rights at law, were threatened by hose claims that Strafford admittedly championed.

A good deal has been written concerning a new conception ›f treason expressed or suggested by the prosecution at the mpeachment. It is not a question of the doctrine of constructive treason. To some extent, hope of obtaining a conviction depended on acceptance by the Lords of that Tudor loctrine. But the doctrine of constructive treason was not ›nly not new but did not involve anything that can be called a .onception of treason. It amounted merely to a contention hat treasonable intention could be proved by a series of acts ıone of which was itself treasonable. The danger of such a loctrine in the hands of an unscrupulous executive must have ›een very obvious. The comment made by defending counsel .t the impeachment of Laud might well have been made at Strafford's trial. 'This is the first time that ever I heard', said Hearn, 'that a thousand black rabbits make one black horse.'

But it is true that a conception of treason that may be called ıew was actually suggested at Strafford's impeachment, though t was stated so indefinitely that it is difficult to be sure what vas meant. 'To alter the settled frame and constitution of ;overnment', Pym declared, 'is treason in any State.' The vords are ambiguous. He meant, I must suppose, that it must ıeeds be a treason to attempt to alter the constitution, not only ›y violence, but by any indirect methods; by official adoption ›f disintegrating legal doctrines, by gradual encroachment, by he assumption of extra legal power on the plea of public afety or of necessity. To endeavour, Pym was asserting, so to ubvert the constitution as to substitute despotism for parlianentary government, must needs be treason in the highest. Shall it', he asked, 'be treason to imbase the King's coin and

must it not be the effect of a greater treason to imbase the spirits of his subjects, and to set a stamp and character of servitude upon them?' So to act is to levy war, not indeed against the King personally, yet against the Crown. If the Crown be understood, as it should be, as a symbol of all lawful authority within the kingdom, then to levy war against the Crown is a worse treason than any against the King's person. Implied in the law of treason as it stood in statute, was a treason undefined which was yet the very root of the law. Ultimately treason can only be conceived as an attack on the commonwealth. It is just because this is the very essence of treason that it is, incidentally, treason to endanger the King's life or to make war upon him. Pym said none of these things; but if he did not mean something at least very like this, he would seem to have meant nothing.

It was strictly a political and not a legal theory that Pym was trying to state. Not only was it not law, but matter of positive law it hardly could be. Even had it been law, it could only have been made to apply to Strafford by begging the question. Strafford's theory of the constitution was strongly based on precedent, and from his point of view it was Pym who was trying to alter the constitution. And neither Strafford nor any one else had claimed for the King despotic power. But the value of Pym's doctrine is quite unaffected by these considerations. To some now it may seem almost truism: it certainly did not seem so then. It was, on the contrary, startling, and, I take it, salutary.

What might most of all have startled those who at the time reflected upon it, was the fact that, on this theory, it was only the King himself who could in the highest and fullest degree be guilty of treason. In a design to destroy parliamentary government and turn the King into a despot, others than the King himself could hardly be more than accessories and agents. The King cannot be indicted in any court; he can do no wrong, for he cannot legally be convicted. But, technicalities apart, the King obviously can do wrong. Pym's doctrine implied that just as, morally, the King can commit murder, so, really, he can commit treason. For treason is not, fundamentally, a crime against the King personally, but a crime against the framework of society. There seems to be

nothing to show that any one, at the time, saw it like this; and Pym, perhaps, did not himself quite know what he meant. But if his meaning were what I suppose, the conclusion that the King, and the King only, can commit the highest treason cannot well be escaped. Assuredly, at the moment no one drew that conclusion; but nevertheless, here already, we have as it were a hint of the possibility of the indictment of 1649.

Chapter III

THE DRIFT TO WAR

1 §. CAUSES

Upon the main constitutional questions that had arisen since the death of Queen Elizabeth, the House of Commons in the first session of the Long Parliament showed itself all but unanimous. It was united in determination that the King should henceforth govern under common or statute law only. The prerogative courts, the jurisdiction of which implied the existence in the King and Council of powers unknown to common law must, therefore, be abolished. All claim to alter the rights of subjects in their property otherwise then by Act of Parliament must be given up. The Hampden judgement, therefore, must be cancelled. The claim to make law for the Church with the co-operation merely of Convocation must equally be got rid of. Parliament must no longer be a body that met only at the King's pleasure. On all these matters there seem hardly to have been two opinions in the House. Nor was there any serious conflict of opinion between the Houses. That the House of Lords, acting judicially, should be unwilling to convict Strafford on charges that evidently could not be sustained, did not touch the main issue. The subsequent resistance of the Lords to the Attainder Bill was but half-hearted and was largely due to their regarding it as a slight to themselves. Both Houses alike wished to get rid of Strafford.

Up to August 1641 the constitutional claim of the House of Commons was essentially the same as that of 1628. The change in the attitude of the majority in the House that then began and rapidly developed is at first sight astonishing and certainly not easy to explain. With the actual proceedings in Parliament we are here concerned only so far as they represent or express opinion. The change that came about apparently, however, involved a change of outlook. By November at least, if not earlier, the House of Commons had split into two opposed groups nearly equal in numbers. In the early months of 1641

the House could fairly claim to represent the views of a united upper class. When it had visibly ceased to represent even that, its action and its claims became more and more violent, aggressive, and revolutionary. By February 1642 at latest, the House would seem to have drifted or been driven into a position in which it felt compelled to make claims that, a few months earlier, it had not dreamed of making. In July 1641 it may well have seemed impossible that the crisis should end in civil war. Even on the assumption that the King wished to undo what had already been done, it must have seemed that he had no means of doing so. Yet by the end of January 1642 a situation had developed in which war was not only possible but actually probable.

Great and I think undue stress has been laid on the fact that serious division of opinion in the House of Commons appeared first on the Church question. But the divergence that showed itself on the Root and Branch Bill seems to have been superficial. The House was divided only on the question whether it were better to abolish episcopacy altogether or to retain it as an instrument of secular government. It was united, still, in desiring to establish complete secular and parliamentary control of the Church. The question was, for the moment, a mere question of means. There may have been a few men in the House who believed in the divine right of Presbyterianism, and there may have been some to whom any form of inclusive national church was objectionable. But no such views seem to have been expressed. It appears very unlikely that any one would have fought for the sake of governing the Church in one way rather than another. On both sides the House was as anti-clerical as it was Erastian. Even in October a Bill, not merely excluding bishops from the House of Lords, but disabling all persons in orders to hold temporal office under the Crown, was passed by the Commons with little opposition.

Increasing distrust of the King might, at first sight, seem to have been the main factor in the change of attitude that took place. It was largely, no doubt, the fault of Charles himself that suspicion of his intentions grew, gradually, dangerously strong. He left undone most things he ought to have done and he did things he ought not to have done. Instead of waiting till 1642 to take Falkland and Hyde and Culpepper as his

chief ministers, he should have taken equivalent action a year or so earlier. He might, it seems, himself have taken, or appeared to take, the lead in that reconstruction of the constitution that had become necessary. He should have made it absolutely clear that he would not countenance army plots; and he should have drastically suppressed the silly activities of his enterprising but ignorant wife. Henrietta Maria's hopes, now and later, of obtaining assistance from France or Spain or Holland were based on mere ignorance and illusion. France and Spain, at war, had not a man or a penny to spare; and none of these States had any interest whatever in interfering. It ought, indeed, to have been clear that disorder in England, in one way or another, was of advantage to all of them. The Queen's futile activities were dangerous, not to England or to the House of Commons, but to Charles: and that chiefly because the House was almost as ignorant as she was of Continental conditions. Charles utterly failed to do the one thing needful; which was to inspire confidence in his sincerity in granting what he could not well refuse. Though, up to July, he made every concession demanded, it was evident that he could do nothing else and that he did so reluctantly.

On the other hand it must be observed that the House of Commons was itself to a great extent responsible for the King's ambiguous and semi-hostile attitude. When it forced upon him the attainder of Strafford it should have known it was doing what no man could forgive. To compel him to betray the most sincerely devoted of his servants, was to put upon him a gross humiliation that the uneasiness of his conscience made it impossible to forget. Charles should have done everything possible to secure the confidence of the Houses: it is no less true that, for the furtherance of their own plans, they should have been at pains not to antagonize him needlessly. If the Act of Attainder rid them of an obstacle, it perhaps created a greater difficulty than that it suppressed.

No constitutional settlement was possible in 1641 except on the basis of agreement among the predominant classes in town and country. And agreement did practically exist up to a certain point. Its nature was clearly expressed and implied in the Bills passed before the King left London for Scotland. It was an agreement that made possible the establishment of a

reconstructed constitution under which the King would be bound absolutely by law. Apart from the totally insufficient income derived from Crown property, he would be unable to raise any money but by consent of Parliament. Within the law, however, he would still retain control of the executive, of official appointments, and of foreign policy. He would, further, possess a veto on all Bills passed by the Houses. The House of Commons would be in a position in which it could paralyse administration; but it would be able to control public policy only indirectly and by clumsy and dangerous methods. Such a constitution would necessarily tend to produce deadlock, and would work only with a deal of friction. For smooth working it would require a tolerance, patience, and wisdom hardly to be hoped for. Yet with only some degree of patience and tact at least complete deadlock could be avoided. But if either the King or the House of Commons failed loyally to accept the position and endeavoured to secure complete control a breakdown would result. There were, indeed, serious objections to a constitution which would place sovereignty nominally in the three-headed body of a full Parliament and actually nowhere. For all that, this was the only constitution upon which effective agreement was possible in 1641; and in 1659, after all the waste and turmoil, it was still the only constitution possible. The Civil War, it would seem, was a futility. It resulted only in a settlement that might have been reached in 1642.

Yet this, evidently, can only be partially true. It means only that such a settlement could have been effected had things not been as actually they were. What the House of Commons as a whole, and what the upper classes it represented, desired was the elimination from the Tudor constitution of those of its features which had to them become obnoxious and the retention of the rest. It might be argued that what they desired to eliminate was just what had made the Tudor constitution workable. Formally and officially the King had accepted the change. We might put it that the majority in the Commons, not believing in the King's sincerity, was forced, or imagined that it was forced, to demand more than could be agreed upon.

The question ultimately involved, the question that lay behind all particular disputes, concerned the power to direct

public policy. In case of disagreement was the King or was the House of Commons to have the power to speak the decisive word? The constitution as conceived by Hyde, and the Royalists generally, did not place that power securely and definitely anywhere. If the House were to be sure of being able to decide the main lines of public policy, it must, at least to a considerable extent, control executive action. If the object of the leaders of the House, of Pym and Hampden, St. John, Holles, and Fiennes, were the strict subordination of the executive on all general questions of policy to the will of the House of Commons, then, even if the King could be trusted, much more had to be done than had been done up to August 1641. So long as the King could freely appoint all his agents and take only such counsel as he wished to take, and so long as he possessed control of all armed forces, he would be in a better position to determine policy than the House of Commons. So long, too, as he could control the clergy through bishops of his own appointment, he would be, to a serious extent, in possession of the one means of influencing popular opinion.

But whether the majority in the House, or even its leaders, conceived the situation thus, is very doubtful. That early in 1642 they did desire to obtain such control for the House of Commons as would leave the King practically almost powerless, is clearly the case. But this fact does not prove that they had in mind any large, constructive design. Whatever the leaders of the House may have intended or hoped, their followers, certainly, seem to have thought of the new claims then made or implied as mere temporary necessities of the moment. They believed that the influences under which the King acted would inevitably lead him to attempt reaction. If that be the case, they were only seeking to safeguard the very constitution which the best Royalists also desired. The conflict between those who thought in this way and the opposition was merely on the question of what was immediately necessary to establish solidly the constitution both wished to establish. There is abundant evidence in the literary warfare of 1642 and 1643 to show that, to a large extent, this was actually the case. The controversy makes it clear that the difference between thinking Royalists and the supporters of Parliament on the constitutional issues was not nearly so great as is often supposed. It

is even surprising to find to what an extent both sides say the same thing.

It may be, nevertheless, that the leaders of the House did actually aim at permanently establishing a constitution which would make of the King little more than a figurehead, and practically place sovereignty in a House of Commons representing the landowning and wealthy classes. Pym's action and speech seems consistent with that view of his intention. He might well think it better that England should be governed by the classes already in control of local government, rather than by a King who could not, practically, be made responsible to any one.

But if any such design was contemplated, it was never explicitly stated. It looks rather as though from August 1641 onwards, the majority in the House of Commons, moved by fear, illusion, and passion, was led, in one case after another, to take action which could only be defended, practically and ideally, by the making of claims and assertions that only a few months earlier it would have repudiated. Not seeing where it was going, it blundered into a position which only revolution could maintain.

§2. REVOLUTIONARY ACTION

Even in the early days of the Long Parliament, the House of Commons had shown a disposition to encroach on the functions of the executive in dealing with the clergy. It had shown also virulent intolerance of adverse opinion and a tendency to make of impeachment an instrument for suppressing criticism. Its treatment of Digby is as good an illustration of this intolerant attitude as is its later treatment of Ralph Hopton or of the Kentish petitioners of March 1642.

So long as the Scots army was in England, what the King's intentions might be mattered little. Its withdrawal in August materially altered the position. From the time of the King's departure for Scotland and the shortly subsequent retirement of the Scots army, the House of Commons seems to have lived in a state of high nervous tension, which the recess did nothing to alleviate.[1] On August 17th, under the influence of its fears, the House usurped what was indubitably a right of the Crown

[1] The Houses adjourned on September 9th and met again on October 20th.

only, by issuing orders to secure the military stores at Hull. It is probable that the majority of its members gave no thought to the implications of such action. When again, by what it called an ordinance, the Houses empowered themselves to issue a commission under the Great Seal, they were doing something ominous for the future and far more serious than members seem to have realized. The mere issue of an 'ordinance' by the Houses was the assumption of a power that, if it still belonged to any one, belonged only to the King.[1] If the Houses by ordinance could take to themselves power belonging by law to the King, what was there that their ordinances could not do? Parliamentary commissioners were sent to Scotland to attend the King, keep watch on his doings and convey to him the wishes of the Houses. Later, the news of the Scottish 'Incident' of October, threw the House of Commons into something like panic. That it did so shows that its members were as ignorant as Charles himself of politics in Scotland.

Far more serious in its results was the news from Ireland that reached the Houses on the first of November. The Irish rebellion affected the situation even more seriously than had the withdrawal of the Scottish army. To deal with it an army would have to be raised and paid for. In the circumstances it was impossible that the majority in the House of Commons should dare to give to the King control of so formidable a weapon. It may well be true, as Mr. Montagu has suggested, that the Irish rebellion made civil war in England unavoidable, by forcing the majority in the House to endeavour to take complete control of all armed forces. But, already, the House had made or implied claims that made any accommodation extremely difficult.

Early in November instructions were sent to the Parliamentary commissioners in Scotland. They were such that it is difficult to imagine how any one could fail to see that they could only aggravate the situation. The King was to be told, in effect, that his action had been governed by the advice of evilly disposed persons,[2] who 'have been contriving by violence

[1] In support of the proposal to act by way of ordinance, D'Ewes referred to one of 1372. Apparently he overlooked the fact that it had been issued by the King alone.

[2] If the words used do not mean this they would appear to mean nothing. See Gardiner's *Documents*, pp. 199–200.

to suppress the liberties of Parliament'. They were described as 'favourers of Popery' and 'factors for promoting the designs of foreign princes'. Charles was to be informed that the Houses had 'just causes of belief' that the troubles in Ireland 'are but the effects of the same counsels'. There was, therefore, just cause to fear that money granted for the suppression of the Irish rebellion 'will be applied to the cherishing and fomenting of it'. In these sad circumstances the Houses felt bound to request the King 'to employ such counsellors and ministers as shall be approved by Parliament'. To these insults a threat was added. If His Majesty should refuse to comply with the request, he was to be told that the Houses would feel compelled to take, on their own authority, such measures for the defence of Ireland as they should think fit, and to place the money voted in the hands of persons they could trust.

The demand that the King should take such ministers and advisers as should be approved by the Houses was natural and reasonable at the moment. It does not, however, seem to have been meant to imply the assertion of any constitutional principle. But to tell Charles that he was likely to allow money granted for the suppression of rebellion to be spent on fomenting it, was to insult him grossly.

Two things in this document are of outstanding significance. One is the implied claim that the Houses, judging it necessary in the public interest to do so, could rightfully, of their own motion and authority, take out of the King's hands the control of military forces and preparations. A few months later, in connexion with the Militia Ordinance, that claim was made explicit. But the instructions afford evidence, also, of something perhaps for the moment still more important. It is clear that the House of Commons was already working up a belief that the King was the tool of a 'malignant' and Popish party, bent on the destruction at once of parliamentary government and of true religion. No description of the Royalist party that was already forming could well have been more grotesquely false. Equally preposterous was the suggestion that the King's ministers were themselves, primarily and directly, responsible for what had happened in Ireland. Yet, whatever its leaders may secretly have thought, this also the majority in the House was beginning to believe.

It is, perhaps, a little difficult to see how this was even possible. But it must be pointed out that these beliefs were about to become of practical value. It was becoming clear that the House might quickly come to need all the popular support it could get. From the standing ground of a belief that the King was in the hands of a Popish party responsible for massacre in Ireland, effective appeal could be made, as actually it was, to popular ignorance and prejudice. Most men, perhaps, find it difficult not to believe what it seems to be to their advantage to believe.

Long before the end of November the leaders of the House of Commons must have been desperate men. The safeguards they believed to be necessary were no longer attainable by legal or constitutional means. They were faced with a growing opposition in both Houses. The outrages in churches that followed the issue of the orders of September 1st, the assumption of arbitrary authority in matters ecclesiastical, the rancour and intolerance displayed, the assumption of indefinite powers to be exercised by ordinance, disgusted and alarmed many. The increase of taxation since 1640 probably alienated many more. The leaders of the House must have felt sure that Charles would never forgive them. A charge of treason, they knew, still impended over them. If Charles were wise enough not to attempt to undo what had been legally done, he might easily, before long, be in a position to avenge the death of Strafford. To suppose that Pym, at least, did not see all this, would be grossly to underrate his intelligence. But it must be added that it is very unlikely that the action of the leaders from this time onwards was motived by desire for personal gain or personal power. They were, in fact, already on the defensive. I am inclined to think that it was to their sense of this that was due their later conviction, that the King began the war. It may also be pointed out that, believing that they were acting in the public interest, they cannot justly be blamed for trying to secure themselves. If they fell, their cause, they would think, would fall with them. Much in the way of misrepresentation or even unscrupulous appeals to popular prejudice, may be forgiven to public-spirited men in such a position.

Looking to its content and to the manner and circumstances

of its issue, it is a little hard to believe that the Grand Remonstrance was not intended to lead to war. It passed the Commons, by a majority of eleven only, on November 22nd, three days before the King's return from Scotland. Along with the accompanying Petition it was presented to him on December 1st, and it was printed and published before Charles had returned any answer. It was a manifesto addressed to the nation at large and, quite obviously, it was an appeal for outside support. Such an appeal was, in itself, little short of a threat of rebellion. Of what possible use was it to appeal for support against the King and his adherents and proclaim utter distrust of him, if there were to be no war? It could but exasperate all those who were disinclined to support unconstitutional claims. It should have been evident that the Remonstrance could not affect the position in Parliament itself, except by forcing those opposed to it to turn to the King.

No new claim, however, was made in the Grand Remonstrance or in the Petition that went with it. It was largely taken up with a recital of the failures and misdoings of the Government since the beginning of the reign. A formidable indictment was, indeed, made out, but badly flawed by the failure to recognize that the King's claims, however objectionable, had a basis in law and custom. Apart from this recital, which could serve no purpose unless it were intended to irritate or to create distrust, the Remonstrance repeated and expanded the assertions made in the instructions to the Commissioners in Scotland.

It opened with a declaration that in spite of the faithful and zealous endeavours of the Commons for the good of the kingdom, they still meet with opposition. There are people who maliciously decry what they have done and oppose what they hope to do. How explain this strange fact? 'The root of all this mischief we find to be a malignant and pernicious design of subverting the fundamental laws and principles of government, upon which the religion and justice of this kingdom are firmly established.'[1]

The malignant party, it appears, already existed under James I. It was 'somewhat damped by the breach with Spain'. But, after 1625, it revived vigorously and from 1629 to 1640

[1] *The Remonstrance*, Preamble.

it was completely dominant. By its malign activities both the war with Scotland and the Irish rebellion 'have been not only endeavoured and attempted, but in a great measure compassed and effected'.[1] So strong has the party become that it is now thinking of setting the King 'free from all restraint of laws concerning our persons and estates'.[2]

It appears that the malignant party was originally 'composed, set up, and acted by the subtle practice of the Jesuits and other engineers and factors for Rome'.[3] This explains why it is anxious above all 'to suppress the purity and power of religion', and 'to introduce and countenance such opinions and ceremonies as are fittest for accommodation with Popery, to increase and maintain ignorance, looseness, and profaneness in the people'. The party, however, does not consist of actual Jesuits. 'The actors and promoters' of these abominable projects, we are gravely informed, are of three types or classes. The party actually consists of (1) 'Jesuitical Papists'; (2) 'the bishops and the corrupt part of the clergy'; and (3) 'such counsellors and courtiers as for private ends have engaged themselves to further the interests of some foreign princes or states'.[4] If this statement was to be taken as inclusive of the whole party, it could only have been numerically small. If, nevertheless, it were actually so formidable, that could only be because the King himself was with it. Strafford and Laud, it was asserted, were practically the heads of it. It is spoken of as 'their party'.[5] That might only mean that they belonged to it; but they are represented as prevailing with His Majesty on its behalf. One can but wonder to which of the three sections of the party Strafford was supposed to belong.

To a summary of the achievements of the first session the Commons added declarations as to what they hoped yet to effect. Their intentions were excellent, if a little vaguely stated. It was proposed to 'order' the King's revenue and to do something for 'abridging both the delays and charges of law-suits'. Assuredly reform in both these directions was badly needed. Above all, stress was laid on the desire to purge and reform the Church. 'Superstitious' ceremonies and innovations were to be done away with, and 'conscionable and preaching

[1] *The Petition.* See Gardiner's *Documents*, p. 204. [2] *Remonstrance*, sec. 62.
[3] *The Petition*, Gardiner, p. 203. [4] *The Remonstrance*, 1–3. [5] Ibid., 76.

ministers provided throughout the kingdom'. There was also expressed a vaguely ominous desire to 'take away the monuments of idolatry'.[1] The malignants, it was explained, 'infuse into the people that we mean to . . . leave every man to his own fancy for the service and worhip of God'. With emphasis and indignation, the Commons repudiated absolutely any such intention.[2]

It seems to me that the Grand Remonstrance placed the House of Commons in a false position, and one from which escape was difficult. It proclaimed the existence of a party, inspired by Jesuits, essentially Papist, working in the interest of Rome and for the establishment of despotism. Yet, visibly, no such party existed. There were perhaps a few people, Romanists or adventurers, who entertained such absurd hopes or projects. But they were very few; they did not form a party; and they had little or no influence. Had the House been content simply to assert the existence of such a party, little harm might have been done. But the Remonstrance suggested, indirectly but distinctly, that the King himself was practically an agent of 'malignants'. It suggested even, that his supporters were either Romanists or enemies of all religion, or traitors sold to foreign governments. These suggestions were, it is true, made somewhat tentatively and ambiguously. But the seriousness of the position created lay just in the fact that, if they were to be defended, they would have to be made explicit. And this is what was actually done in the course of the next few months.

The Remonstrance, whatever it was intended to be, proved to be a first rough draft of suggestions and assertions that were worked up later. Their effectiveness as propaganda is shown by the frequency with which these suggestions, expanded and made explicit, are repeated in the pamphlets of 1642 and 1643. How far the majority in the House really believed what it asserted, it is, of course, impossible exactly to know. But the ambiguities of the Remonstrance and the confusion of its arrangement, probably reflect accurately the honestly befogged condition of the rank and file of its members.

It seems probable that, by the end of November, little doubt existed in the minds of the leaders of the House that, for their

[1] *The Remonstrance*, 184, 186. [2] Ibid., 182, 184.

own safety and for that of their cause, it was necessary to take over control of all armed forces existing or to be raised. If they still felt any doubt on the point, it must have been completely dissipated in the course of the next month. All through December, along with the increasing exasperation of parties, panic and violence increased in London. Twelve of the bishops, alleging that they were prevented by riot from taking their places in the House of Lords, entered a formal protest, declaring that all proceedings in their enforced absence were void. The House of Commons thereupon charged ten of them with treason. The point they had raised might be good or bad in law, but it was quite obviously not treason to raise it. That, in such an atmosphere of suspicion and desperation, a charge of treason should be made against some of the leaders of the Commons was only what was to be expected. The attempt of Charles to seize the five accused members in the House itself might be described as the first overt act of war. It was hardly that; it was rather the act of a weak man suddenly resolving to assert himself.

It is not worth while to discuss here the legal aspects of the King's action. The first declaration of the House of Commons on the matter was quite reasonable, though it raised debatable points. But on a body already dominated by fear and suspicion the effect of that action could but be disastrous. That Charles had had the least intention of bringing about a massacre is completely incredible. But there was in his proceedings at least a threat of violence. More serious still, perhaps, was the mere fact, that the charge of treason, so long impending over the leaders of the House, had at last materialized. Henceforth, whatever had been the case earlier, they were fighting for personal safety. Accommodation between men charged with treason and the King who accused them, was but barely possible.

On January 10th the King left London and immediately after his arrival at Hampton Court, both sides took steps to secure the magazine at Hull. The edge of war was reached and both sides knew it. On January 25th Pym told the Peers that if they would not join in demanding for the Houses control of the militia and fortresses, 'the House of Commons should be enforced to save the kingdom alone'. From what was it that

the kingdom was to be saved? Not, surely, from the disaster of a civil war that Pym, whether he knew it or not, was doing more than any one else to bring about. The Long Parliament, as in any sense a representative body, had broken down and come to its end.

Chapter IV

THE WAR OF MANIFESTOES

§1. 'PARLIAMENT'S' STATEMENT OF CLAIM

FROM the early spring of 1642 to the close of that year both sides were engaged in stating and defining their constitutional claims and position and in pleading justification for their proceedings before the English people. Each side was seeking to win support rather than to convince the other. The issues on which war was to begin were thus being defined. This war of manifestoes that, for the most part, preceded the fighting was the starting-point of a great debate. It was on the claims and the assertions made in the long series of Declarations, Resolutions, and Remonstrances published that year that controversy for a long time turned. Not only in 1642 but all through 1643 a host of writers were occupied in defending or attacking the positions taken up. In a large number of pamphlets the official arguments and assertions were, indeed, simply reproduced, with much crudity and confusion.

The final adoption on March 5th 1642, of the Militia Ordinance and its publication as law without the King's consent, was the consummation of a series of encroachments on the legally established royal prerogative. It was preceded by several attempts to obtain the King's consent to the placing of the control of fortresses and militia in the hands of nominees of the Houses. Petitions to that effect were presented in January and February. In the middle of February the first draft of the Militia Ordinance was sent to the King for his approval. His refusal provoked the so-called petition of March 1st, which, actually, was a threat. Charles was told by his petitioners that 'since the dangers and distempers of the kingdom are such as will no longer endure delay', they will, if he persists in refusal, 'be enforced for the safety of Your Majesty and your kingdom to dispose of the Militia by the authority of both Houses'. The Ordinance of March 5th was the sequel; and it led straight to war.

The Houses were asserting that the King had deserted his Parliament and practically refused any longer to co-operate with it. The country was in imminent danger and the King's advisers not to be trusted. It was claimed that in these circumstances the Houses were entitled to take such measures as they judged necessary to protect alike the King and his subjects from insurrection at home and invasion from abroad. But it was impossible to leave it at that. The Houses were bound to give at least some sort of reason why the indefinite power they claimed should rest with them. In a Declaration presented to Charles on March 9th they boldly announced that they were only making use of a power for the defence of King and kingdom, 'which by the fundamental laws and constitutions of this kingdom resides in us'.

It cannot be said that this reference to fundamental laws made things any clearer. The phrase had no recognized meaning. Either the Houses meant to assert that the power they claimed had always by positive law belonged to them, or they meant that the nature of the constitution implied that it was theirs. Later the King was to ask, as, later still, many others asked as vainly, what these laws were and where they could be found. No answer could be given that did not make it clear that the 'laws' referred to were not law. Either they were principles involved in some theory of the State in general, or of the English State in particular, or they had no existence. When, in a Declaration of May 19th, the reference to fundamental laws was repeated with emphasis, it was added that 'the wisdom of this State hath entrusted the Houses with a power to supply what shall be wanting in the Prince'. Much was later to be written about this 'power of supply' but, however daring the assertion, it was plainly but another way of putting what they had said already. Nor did the Houses at all improve the position by naïvely declaring that 'this law is as old as the kingdom, that the kingdom may not be without a means to preserve itself'.

Obscure as the ground of the claim of right might be, it carried an implication that could not be escaped. It implied quite clearly that it was for the Houses, independently of the King, to judge of the extent of a danger to the nation and of the measures required to meet it. Talk about a power of supply

only emphasized that implication. It had been claimed for the King that in case of imminent danger, concerning which he was the judge, he could rightly do what normally he could not do and levy money without consent of Parliament. It was now claimed for the Houses that in a similar case, they, being the rightful judges of the danger, could assume of their own authority a control of armed forces which did not normally belong to them. In a Declaration of May 26th the Houses came yet a little nearer to an adoption of the doctrine of Berkeley's judgement in the Hampden case. Even granting, they then declared, that the King had a proprietary right in the magazine at Hull, 'who doubts that a Parliament may dispose of anything wherein His Majesty or any subject hath a right, in such a way as that the kingdom may not be exposed to hazard and danger thereby?'[1]

The words look like an audacious bluff. Very many did more than doubt the assertion; just as very many denied, also, that the Houses had any right to call themselves 'a parliament'. As stated, indeed, the claim was limited. It was a claim to be able to 'dispose' only of such property as might be used to the public detriment. But seeing that the Houses also claimed to be sole judges in the matter, the line between such a claim and a claim to tax outright for public defence, was practically a fine one. The houses had, earlier, declared for the view that nothing short of an Act of Parliament could alter a man's right in his property. Unjustly and even absurdly they had charged Justice Berkeley with treason for claiming for the King a power similar to that they now claimed for themselves.

In a 'Remonstrance', issued only on November 2nd but passed in the House of Commons some months earlier, the principle on which the Houses had acted was argumentatively defended. 'There must', it was then declared, 'be a judge of this question wherein the safety of the kingdom depends . . . If there be not an agreement between His Majesty and his Parliament, either His Majesty must be the judge against his Parliament or the Parliament without His Majesty. . . . And if the kingdom knows best what is for its own good and preservation and the Parliament be the representative body of the

[1] All the texts quoted from the declarations on each side are from Husband: *An Exact Collection of all Remonstrances*, etc., 1643.

kingdom, it is easy to judge who in this case should be the judge.' Definitely they then rested their claim upon the representative character of the Houses, and in doing so asserted not law but a principle. But in what sense were the Houses at that moment representative of the kingdom?

The Houses might have done better frankly and from the first to rest their claims on their representative character and to argue the matter on that basis. But they had been anxious to make out that their claims were based on actual constitutional law. Even early in March it is clear that they had taken up a position in which they would be forced to make claims more far-reaching than any they had yet made. It was of little use to talk about fundamental laws of which no one knew anything, or about vague dangers that no one recognized. They had appealed to law and to law they had to go. In a message received by the Houses on March 16th, the King told them that among his known privileges was one, 'which he is assured, is a fundamental one, that his subjects cannot be obliged to obey an act, order or injunction to which His Majesty hath not given his consent'. 'I have not known both Houses in more choler and rage', wrote Clarendon, 'than upon the receiving this message.' It is no wonder that they were annoyed. The message called upon them to say definitely why any one should regard the Militia Ordinance as law. So exasperated were they that they passed a resolution that seems positively silly. It was resolved 'that those who advised His Majesty to this message are enemies to the peace of this kingdom and justly to be suspected to be favourers of the rebellion in Ireland'.

But that was not the only resolution passed on this occasion. To the implied question that had been asked there was, really, only one possible answer; and the Houses made it. Their answer cut the knot; and the resolution in which it was expressed was by far the most important declaration the Houses had yet made. It was resolved: 'That when the Lords and Commons in Parliament, which is the supreme court of judicature in the kingdom, shall declare what the law of the land is, to have this not only questioned and controverted, but contradicted and a command that it should not be obeyed, is a high breach of the privilege of Parliament.'

This resolution was, as Gardiner says, a claim of sovereignty

for the Houses. They had been challenged to show specifically whence the power they claimed was derived. They were faced with the fact that the King, as well as they, could appeal to fundamental law. Their answer, in effect, was that if the Houses declare that such and such power belongs by law to them, that declaration of itself settles the question. Their decision on the point may not even be questioned.

In subsequent declarations the Houses seemed inclined to retreat a little from the position thus taken up. They were not, they said on May 19th, claiming power to make law. They did not deny that law was made in Parliament and that the King had, ordinarily, a right to veto Bills passed by the Houses. Their language in that Declaration might have been taken as meaning that it was only under extraordinary circumstances, that the Houses, acting without the King, could make general and unquestionable declarations of law.

But no such qualification of the claim appeared in the original resolution. Quite definitely it had laid down that whatever the Lords and Commons declare to be law of the land, no one may question that judgement. From that assertion no retreat was really possible except into utter ambiguity. Nor was there any way of escaping what logically followed from the claim. A power, unlimited because unquestionable, to declare that this or that is law, is obviously a power to make law. The distinction between such declaratory power and pure legislative power is little more than verbal and for practical purposes entirely negligible. A 'court' that can declare anything it pleases to be law and can by its own declarations unlimitedly enlarge its own powers, is a legislative body in the fullest sense, whatever you choose to call it. If such declaratory power existed, uncontrollable, in the Houses alone, they could, as the King pointed out,[1] make any law they pleased.

It is clear, indeed, that Parliament was regarded by lawyers as a court and even as primarily and essentially a court. Its acts might be, and were, regarded and spoken of as judgements of a court. Yet the difference between strictly judicial proceedings in Parliament and its legislative action had for a long time been understood and recognized, in spite of verbal confusions. Every one knew that Parliament was not merely a

[1] *Answer to the Declaration of May 19th.*

court of judicature. The words *judicium*, judgement, jurisdiction, judicature were loosely used. But they were, frequently, quite consciously used in two very different senses. 'In this first and stricter signification', Sir John Eliot had written concerning the word *judicium*, 'it intends a power of judicature, the decision and determination of . . . controversies judicial . . . But it goes further likewise to the larger sense and meaning which intends a power of government, and so it is the same with *potestas* and *imperium*.' Eliot was clumsily saying that the word was used in two senses which he saw were different. The Houses may have argued from the fact that the judgements of inferior courts could be reversed in Parliament to a power in the two Houses to declare law in general. There was little excuse for such confusion. The argument ignored the fact that in strictly judicial proceedings in Parliament, the House of Commons either acted as prosecutor or played no part at all. As the King pointed out, it had never before pretended to be any part of a court of judicature.

In their declarations of this year the Houses habitually assumed to themselves the name of 'Parliament'. In doing so they evaded a difficulty and begged the question. No one denied that the High Court of Parliament could declare law, even though an alteration of what had been recognized as law was involved. But what the Royalists were saying was that the High Court of Parliament included the King and had no existence otherwise. 'We hope', the King proclaimed, 'our good subjects will not be long misled by that common expression in all the Declarations, wherein they usurp the word Parliament . . . by calling it the Resolution of Parliament. . . . The vote', he complained, 'of the major part of both Houses, and sometimes of one, is now called the Resolution of the whole kingdom.'[1] Royalist writers in 1642–3 habitually asserted, quite distinctly, that legislative power belonged solely to King, Lords, and Commons in Parliament. For them the problem was how to maintain the balance and keep each 'estate' in its proper place.

Evidently, that balance, so far as it had ever existed, was completely upset by a claim that under any conditions the Houses alone could act as the High Court of Parliament. For

[1] *Answer to the Declaration of May 19th.*

the assumption that that might be, there seems to have been no legal basis whatever. It is true that before the end of the year Parliamentarian writers were saying that the King was not, and never had been, a constituent part of Parliament. But unless you were prepared, as some were, to deny outright that the King could veto Bills presented by the Houses, that assertion was practically meaningless.

Parliament or no Parliament, it was not enough for the Houses to account as best they could for their assumption of 'a power of supply' in a national danger. The law, as hitherto understood, gave to the King certain discretionary powers under the name of prerogative. That 'ordinary' prerogative was generally held to be part of the law of the land. But it stood in the way of the Houses and had somehow to be dealt with. Actually the legal claims of the King were met in a manner which all but denied him any discretionary power whatever. If the declarations of the Houses could be made good, he would be practically deprived of any real power of independent action.

'We hope', the Houses announced on May 19th, 'that His Majesty will not make his own understanding or reason the rule of his government', but will follow the advice of the Houses of Parliament, 'which are the eyes in this politic body, whereby His Majesty is, by the constitution of this kingdom, to discern the differences of those things which concern the public peace and safety thereof.' If this meant anything, it meant that the King must follow blindly and in all cases, since, otherwise, he could not avoid making his understanding the rule of his action. In the Declaration of May 26th, the Houses declared that the King's demand for admittance into Hull, had been made 'contrary to the advice and direction of both Houses of Parliament, without the authority of any court or of any legal way wherein the law appoints the King to speak and command'. They had claimed already to be exclusive and final judges of what was law; now, it seems, they were suggesting that the King could give no orders and in fact do nothing, except by their authority, or that of some other court of law.

Any doubt as to what they meant might have been removed by a declaration adopted by the Houses on June 6th. Towards

the end of May, Charles had issued a proclamation forbidding obedience to any orders in pursuance of the Militia Ordinance. The Houses retorted that, for the preservation of peace and safety, they had power 'to declare the King's pleasure in those things as are requisite thereunto; and what they do herein hath the stamp of royal authority . . . for the King's supreme and royal pleasure is exercised and declared in this High Court of law and council, after a more eminent and obligatory manner than it can be by personal act or resolution'.

Much was heard later of the distinction between the King's personal and the King's regal will. The distinction was, actually, as valid as it was simple. Assuming, as Charles himself was at that moment assuming, that the King was absolutely bound to govern within the law, a command contrary to law or a command to break law, could not be in the proper sense a regal command. It would be a command the King had no right to give and which, therefore, as King, he could not give. It would express nothing but his personal wish and the subject would be bound to ignore it. But, obviously, it did not follow from this that the King could give no orders, unless by authority of Parliament or in pursuance of a judgement in the courts. His prerogative, recognized by the courts as part of the law, was independent, not of law, but of Parliament or court. Nor did it in any way follow that orders given by the Houses alone must be taken as commands of the King. There was indeed no ground for holding that they could ever be so taken. Yet, in spite of some ambiguity in phrasing, this is what the Houses now seemed to be asserting. If that were indeed the case then, no doubt, Hotham's refusal to admit the King into Hull, was an act, not of rebellion but, as they had declared, 'an act of great loyalty to His Majesty and to his kingdom'. If that were so, the Militia Ordinance itself was an expression of the royal will. But to say that was, in effect, to say that the Houses were the King and could themselves exercise the royal prerogative as and when they pleased.

One difficulty yet remained. If there were one right of the King which hitherto the law had fully recognized, it was that of refusing assent to Bills passed by the Houses. Nor had there ever been a doubt that his assent was necessary to make a Bill into a statute. The first denial of the absolute nature of this

principle of the constitution appeared in the Declaration of May 19th. It was then asserted that 'the freedom of His Majesty's vote doth not import a liberty . . . to deny anything how necessary so ever'. But the Declaration of the 26th went a good deal further. The kings of this realm it was then declared are bound 'both in conscience and in justice', to give their assent to 'such Bills as are offered unto them by both Houses of Parliament, in the name and for the good of the whole kingdom'. They are bound in conscience to do so by the oath taken at their coronation. 'In justice they are obliged thereunto in respect of the trust reposed in them, which is as well to preserve the kingdom by the making of new laws, where there shall be need, as by observing of laws already made.'

In the Remonstrance issued on November 2nd, in which the Houses finally and argumentatively summed up their claims, this particular claim was restated and with more precision. It was still asserted that the King was under an obligation to pass all Bills sent up to him by the Houses. But it was admitted that no Bill could, in ordinary circumstances become law without his assent, and that his assent could legally be refused. 'So far are we', they added, 'from taking away his negative voice.' The King is bound in conscience and honour to give his assent; but he can legally refuse to do so and, if he does, there is ordinarily no remedy. Only such Bills as are, in the judgement of the Houses, 'for the necessary preservation of the kingdom', become law without the royal assent and then only 'whilst that necessity lasteth'.

The Argumentation by which this claim was supported in the Remonstrance was extraordinarily feeble. It was remarked that the old formula *Le Roy s'avisera* implied only a right to consider and not a right to refuse. Comment upon this seems to be needless. In his answer to the Declaration of May 26th, the King had given the exact words of the oath he had taken at coronation. There was not, of course, a word in it that even remotely suggested an obligation to pass Bills. On this particular point the fact might have been supposed conclusive. It was surprisingly answered that the obligation in conscience arose from 'the oath which is or ought to be taken'. But this is only a case of the circular argument in which the Houses indulged habitually. Further argument was added from

ancient forms of coronation oaths which, whatever exactly they meant, were certainly irrelevant. It may well seem astonishing that the Houses should not, rather, have boldly declared that they could not recognize in any one a right of veto on the legislative proposals of the representative body of the nation.

But it is clear that the Houses were anxious to base their claims upon actual law. They would not admit that they were making new claims. They tried hard to persuade themselves and others that they were claiming only what, by law, was theirs already. The confusion and incoherence that is apparent in their declarations was the result. What they desired to effect was really wholly inconsistent with such an attitude. It was impossible to maintain that they were claiming only such powers as law gave them, except by saying that the law actually was whatever they chose to say it was. That declaration, accordingly, they were forced explicitly to make; and it amounted to a claim that the Houses alone could make law of their own authority. Yet they had proceeded to disclaim any power to make new law. They seemed to be saying that whatever they thought ought to be law must actually be law, and that, therefore, in declaring it to be so, they were not making new law, even though nobody had ever heard before of the rule laid down.

Yet more incoherent or ambiguous were others of their declarations. They had declared that the King was bound not to act on his own judgement but to follow in all things the advice of the Houses. Yet they had admitted that it was only in conscience and in honour that he was bound to give assent to all Bills presented to him. They had declared that only such Bills as the Houses judged to be 'necessary for the preservation of the kingdom' could become law without his assent. They had, too, declared that orders given by the Houses must in some cases be taken as expressing the King's own will, even though he was actually giving orders to the contrary. But the circumstances in which this would be so remained undefined. So confused, in fact, were the declarations made that no one could be certain what was meant.

The Houses found themselves compelled to appeal to something they called fundamental law. Whatever they meant by that, it was certainly not either statute or common law as

recognized by the courts. That appeal was bound to lead, as it did, to controversy over the foundations of the State and the nature of political authority. But the Houses seem to have been anxious to avoid any such discussion. They made no serious attempt to connect their claims with any theory of the State in general or even of the English constitution. Such declarations of general principle as they made were the merest irrelevant commonplaces.

They declared that Kings are empowered only for the good of their subjects. So far as I know, no one in England would have denied that proposition. In the Declaration of May 26th they took advantage of some rather clumsy phrasing on the King's part to declare against the notion that the property of subjects was the King's property. The King had said that if the Houses could deprive him of his town of Hull, they could deprive any private person of his property. Obviously the phrase 'our town' meant the same as the phrase 'our subjects'. Obviously, too, the argument was that if the Houses could deprive him of his rights in Hull they could deprive a subject of his rights in property. It was quite irrelevantly that the Houses denounced 'this erroneous maxim, infused into Princes, that their kingdoms are their own and that they may do with them what they will'. No Englishman that I know of had ever held that doctrine.

The declarations made by the Houses might, at times, have seemed to imply that sovereignty in a State should, or does, always essentially reside in a representative body. But they never actually said that, or, indeed, anything at all really like it. They may have been half aware that from such a proposition undesirable inferences might be drawn, as, indeed, a little later, they were. The Houses seem rather to have wished it to be believed that they were engaged in reviving an ancient law and an ancient constitution that had been partially obliterated by royal encroachments. Yet they never said that either; even though some of their supporters were already saying it for them.[1] Had they foreseen the ways in which that notion of an original constitution would, within a few years, be developed, they would certainly have been horrified. But they

[1] See *Reasons why this Kingdom ought to adhere to Parliament*, August 1642, B.M. E. 108 (90).

did not know where they were going; and there is nothing at all unusual or surprising in that fact. It seems indeed doubtful whether they ever knew quite what they were claiming. The language of their declarations is consistently ambiguous. It is often hard to tell whether they were merely claiming that in the present extraordinary circumstances such and such power devolved on the Houses or whether a claim is asserted as permanent and fundamental law of the land. But, at least, whatever else they were doing, they were certainly raising a number of interesting questions.

The importance of the declarations made by the Houses in 1642 lay not in what they actually declared but in what, as a whole, they suggested. They show that the Houses were anxious to avoid opening a discussion on first principles. They refused to commit themselves to any theory of the State. That was, perhaps, due to a sense of danger; and, perhaps, was characteristic of a body of average Englishmen. For all that, taken as a whole, their declarations suggested far more than was said. They implied a conception that was at once revolutionary and of the most far-reaching importance. In spite of confusion and ambiguity it seems that the Houses were really claiming sovereignty for themselves as the representative body of the nation. The suggestion is nowhere distinct, but it seems to be everywhere present in their declarations. What these declarations as a whole suggest is, that the King ought to regard himself as an agent of the national will, expressed by its representative body. He should hold himself bound to follow its advice; his will as King should always be its will; it is intolerable that he should have a real right to refuse his assent to Bills expressing its judgement of what is required. The ideas of the representative body as to what law should be and as to the general direction of public policy, ought always to prevail.

This, as things stood, was a conception so radical and indeed so revolutionary, that the Houses might well have shrunk from expressing it explicitly. It does not seem, indeed, that they were clearly conscious of expressing it even by implication. For the moment the suggestion of so radical a change in the constitution was premature and impracticable. Yet within the next seventy-odd years a great advance was made towards

the realization of it in practice. That it was made so quickly was largely, it is true, the result of accidents that could not possibly be foreseen. A much longer time was to pass before, in conditions very different from those of 1642, the change then ambiguously suggested, can be said to have been solidly and completely realized. Yet it can hardly be doubted that the direction in which the Houses then pointed was that of a dominant tendency. In that sense they may fairly be said to have been right. Whether they were 'right' in any other sense is a question hardly worth asking, because plainly unanswerable.

§2. THE NINETEEN PROPOSITIONS

The character of the positive proposals for a settlement made by the Houses of Parliament in 1642 goes far towards confirming the interpretation here adopted of the various ambiguous assertions made in their declarations. Gradually, it appears, the Houses came to a definite conclusion as to how the country should in future be governed. The Nineteen Propositions presented to the King on June 2nd 1642 expressed that conclusion and were clearly intended to establish the practical sovereignty of the representative body. They contained what was, in effect, a draft of a new constitution, evidently intended to be permanent. In the preamble to the document appear the usual references to public danger and the machinations of evilly disposed persons. But there is no suggestion that the arrangements proposed were to be only temporary. The articles concerning the education and marriages of the King's children distinctly imply the contrary.

No claims of right were made in the Nineteen Propositions. They were wholly concerned with practical proposals. Perhaps their most striking feature is the omission from them of any mention of the claims of right that had already been made. The King was not asked to admit that in any circumstances the Houses of Parliament could declare what was law of their own sole authority. Nor was he asked to incur a legal obligation to give assent to all Bills insistently presented by the Houses. He was not even asked to admit that he was bound to do so in conscience and in honour. To these far-reaching and suggestive claims there was no reference whatever.

The omission may well have been due simply to a sense that to press the King on these points was unnecessary and might be dangerous. What was actually demanded was sufficient for all practical purposes. For, in fact, the King was asked to consent to become for the future little more than a figurehead. All members of the Privy Council, all ministers of State and high officials, at home and abroad, were henceforth only to be appointed with the approbation of the Houses. Once appointed they were to be irremovable *quamdiu se bene gesserint.* Whatever exactly was meant by that phrase, it certainly meant that the King could not dismiss them without consent of the Houses. No decision could be taken and no public act 'concerning the affairs of the kingdom' was to be done without the approval of a majority of the Privy Council, signified in writing under their hands. The whole prerogative of the Crown and complete control of the executive was, in fact, to be practically made over to committees and nominees of the Houses. Without their sanction the King could give no order nor take any sort of public action.

'These being passed', Charles declared in his official Answer, 'we may be waited on bare-headed, we may have our hand kissed, the style of Majesty continued to us, and the King's authority declared by both Houses of Parliament be still the style of your commands; we may have swords and maces carried before us and please ourselves with the sight of a crown and sceptre . . . but as to true and real power, we should remain but the outside, but the picture, but the sign of a King.' If the proposed arrangements worked as intended and there were no reaction, so it would have been.

Such demands being made, it was matter of course that the King should be required to ratify the Militia Ordinance and withdraw his proclamations concerning it, to dismiss such armed forces as he had with him, and to bind himself to assent to a Bill declaring the innocence of the members he had charged with treason. It was also only consistent with previous declarations that he should be asked to agree to the punishment of those the Houses regarded as 'delinquents'. Yet this demand that Charles should hand over some of his chief supporters to the mercies of the Houses, was almost alone sufficient to wreck the whole scheme, as it wrecked other proposals later. More

really important, however, was it that Charles was required to bind himself to allow of such a 'reformation' of the Church as the Houses should think proper. Superstitious practices, innovations, and pluralities were to be done away and 'scandalous' ministers got rid of. A preaching ministry was to be provided for 'throughout the kingdom'. The financial difficulties of this operation were likely to be serious; but the King was to give his best assistance in overcoming them. Nothing was said, however, about abolishing episcopacy. There was no decided inclination in the Houses to establish a Presbyterian form of Church government, and there was a perception that bishops practically chosen by the new Privy Council might be easier to handle than consistories were likely to be.

How much would actually be done remained very doubtful; but two things at least were clear. It was clear that the party in power meant to take control of the pulpit as far as was possible. It was equally certain that there had been more liberty for religion under the system that was to be destroyed than there would be under the 'reformed' State Church. It was definitely demanded that the laws against Catholic recusants and priests should be strictly enforced and that the children of Catholics should, somehow, be educated as Protestants. The King declared his readiness to accept these proposals: his readiness was that of the mass of his party. But it would not only be the Catholics who would suffer. It was certain that there would be no toleration for refusal to conform to, or for criticism of, the official doctrines and arrangements. The prospect was alone sufficient to provoke and to justify resistance to such reactionary projects.

The terms offered to Charles were such as might be imposed on a completely defeated enemy. There can hardly have been, at Westminster, any but the faintest hope that he would accept them. Had he done so, he would, it seems to me, have been false to his trust as he was accused of being. He had already disabled himself from dissolving the Houses then sitting without their own consent. One cannot but wonder how long a time would have passed after his acceptance of these terms before that consent was given. Charles might perhaps have ventured upon a waiting game, had it not been certain that he would utterly discredit himself by so acting. But it seems probable

that, with the whole government apparatus in the hands of supporters, a general election would have enabled the ruling party firmly to establish their oligarchy.

The most thorough and authoritative historian of this period has said of the Nineteen Propositions that 'there is scarcely a word in them which is not in accordance with the spirit of the constitution of the present day': that is, of 1899. But the observation is hardly relevant. It throws no light whatever upon the thoughts and aims of men in the seventeenth century. It is certain that Pym and his supporters did not aim at the establishment of such a constitution as existed at the end of the nineteenth century. To them the existing Houses of Parliament were representative of all that counted. As things actually developed, England passed through a long period of oligarchic or aristocratic government into a period at least theoretically democratic. If any one in 1642 desired such a consummation he was certainly not to be found in the House of Commons.

§3. PLEAS OF THE HOUSES IN JUSTIFICATION OF TAKING ARMS

Soon after the King's refusal of the Nineteen Propositions, it was announced by the Houses that he apparently intended to make war against his Parliament. That was really only a way of expressing their own determination to prepare for a war that already seemed unavoidable. On July 12th they resolved 'that an army shall be forthwith raised'; and that was almost equivalent to an actual declaration of war. When that point was reached it became at once necessary for them both to appeal for popular support and to plead justification for their doings. They proceeded to do so; and at once we come upon a fact which appears highly significant. It might have been expected that the Houses would declare that they were preparing to fight in defence of those rights under fundamental law which the King denied to them. But actually their plea was very different. They declared, now, that they took arms to prevent the complete destruction of the parliamentary system and of Protestant religion in England.

From the time of the Grand Remonstrance the Houses had been leading up to the assertions made and the pleas set forth

in their declarations of August and October 1642. But for some time after the King left London another line of defence for their attitude was suggested. They were for a time inclined to rest their case for the Militia Ordinance upon allegations of danger of actual invasion from the Continent. As early as January 25th Pym spoke, with portentous vagueness, of invasions threatened from abroad. On March 9th the Houses informed Charles that they had heard that the Pope had 'solicited the Kings of France and Spain to lend your Majesty 4,000 men apiece to help to maintain your royalty against the Parliament'. In a petition presented on March 26th they told him a tale still more absurd. They had received information that a certain person unknown had asked an equally obscure 'mariner' to go to Elsinore and 'take charge of a ship in the fleet of the King of Denmark there prepared, which he should conduct to Hull: in which fleet likewise, he said, a great army was to be transported'. They had, indeed, the grace to say that this silly story might not be true. But so late as May they were still talking of 'the fury of enemies from abroad'.

Such fears, or pretences, however, subsided or were dropped a little later. There had never been any but the slenderest foundation for them. It is true that, in the early months of 1642 Charles, doubtful of the amount of support he could find in England, had been ready to accept assistance from any quarter. Foolish and futile attempts were made to secure help from the United Netherlands and from Denmark. Early in 1642 the Prince of Orange, tempted by the Queen's offer of a marriage alliance, appeared to be willing to give what little assistance he could. It was likely to be very little, at best, since the dominant merchant class of Holland was well aware that interference was not in its interest. One of the last things they could desire to see was a strong government in England. Attempts were made, also, to open a negotiation with Denmark. But the hope of obtaining assistance from that quarter seems to have rested on no better foundation than the fact that King Christian IV was an uncle of Charles. Nothing whatever came of these futilities. By June the Prince of Orange had discovered that he could do nothing; and Denmark, of course, made no sign. Any hope that either France or Spain could or would interfere would, as Clarendon points

out, have been no less than absurd. Before the end of June all such hopes had for the time been abandoned. On their side the Houses dropped the subject. No reference to any danger of invasion was made in the pleas of justification issued on August 2nd and on October 22nd.

In those two proclamations, both of them explicitly issued in justification of taking arms, the Houses rested their case upon allegations already made in the Grand Remonstrance. In the interval, the assertions there made concerning the prevalence with the King of a Popish 'malignant' party, had been amplified and made more positive. It is curious to note how they were developed. In the Grand Remonstrance it had been asserted that the Irish rebellion had been 'in great measure compassed and effected' by the malignant party. In the preamble to the Militia Ordinance it was declared that the Papists and ill-affected persons 'who have already raised a rebellion in Ireland', are likely to proceed 'to stir up the like rebellion in England'. On March 9th it was declared outright that the Irish rebellion had been 'framed and contrived here in England'. For this assertion the Houses professed to have evidence; but none was forthcoming.

Similarly, as time went on, the papistical element in the royal party became, in the view of the Houses, more and more predominant. Its malignancy, too, became more evil and ferocious and the influence of Papists and malignants with the King steadily increased. On March 9th the Houses expressed a fear that the King is being led to make up his mind to establish Popery in England. On May 19th all his recent words and actions are attributed to this evil influence.

On June 21st it was proclaimed that, if those about the King have their way, London will be given up to sack, 'as a prey to those desperate and necessitous persons'. On July 12th it was resolved that an army should be raised for, among other things, 'the safety of the King's person'. This suggestion that Charles needed to be rescued from the ruffianly and papistical crew into whose hands he had fallen, was further developed later. It was a pretence similar to that adopted by the Huguenot chiefs in 1562. It reminds one of the ridiculous story told by Prynne in *Rome's Masterpiece.*

On August 2nd the Houses issued 'a declaration of the Lords

and Commons to justify their resolution to take up arms'. Parliament, they declared, is compelled to defend itself against a party which consists of 'Papists, the prelatical clergy, delinquents, and that part of the nobility and gentry which either fears reformation or seeks preferment by betraying their country'. It is the object of this party 'to destroy the Parliament and be masters of our religion and liberties, to make us slaves and alter the government of this kingdom and reduce it to the condition of some other countries which are not governed by parliaments and so by laws, but by the will of the Prince, or rather of those that are about him'. The people of England must understand that 'if the King may force this Parliament, they may bid farewell to all parliaments from ever receiving good from them: and if Parliament be lost, they are lost'. In a supplementary declaration, dated August 8th, it was added that the objects of the Royalist party being 'to introduce Popery and idolatry, together with an arbitrary form of government', from its success 'nothing can be expected but the miserable ruin and desolation of the kingdom and the bloody massacre of the Protestants'.

Finally, on October 22nd, the Houses issued a declaration 'to this kingdom and to the whole world'. But there was little more that they could say. They declared that they were now at last fully convinced that the King was hopelessly 'engaged to the Popish party for the suppression and the extirpation of the true religion'. It was represented that he was surrounded by actual Papists, open or disguised, and it was strongly suggested that Papists formed the main body of his supporters. The monstrous allegation of an intention to sack London was now repeated.

The Houses, to say the least, were suggesting that a Catholic rebellion had broken out which had captured the King and been joined by 'Jesuited' clergy and by all manner of necessitous adventurers and ruffians. He had been joined, too, by those 'of the nobility and gentry who, out of their desire of a dissolute liberty, apprehend and would keep off the reformation intended by the Parliament'. This vile crew, it was suggested, was the Royalist party. They were suggesting also that the King's army consisted mainly of Papists and that he was practically a prisoner. They were asserting quite positively that the object

of the Royalist party was the establishment of despotism and the destruction of all real religion.

It would, however, be altogether a mistake to suppose that the majority in the House of Commons and its supporters among the peers were consciously and deliberately disseminating falsehoods for the sake of obtaining the support they needed. There may, of course, have been individuals among them who were guilty of that offence against humanity. But though it may be hard to believe that the Houses honestly meant what they said, it is, I think, yet more difficult to believe that they did not. It is a commonplace of history that in conditions of excitement and exasperation and fear, men tend to believe what it is to their advantage to believe. The most grotesque distortions and exaggerations come then to seem but a probable interpretation of the facts of the case. Credit is then given, even in the absence of all evidence, to the most improbable and even absurd rumours.

Gross misrepresentation, conscious or unconscious, of the character and aims of opponents is a constant feature of human conflict. When actual war impends it may well seem, to parties or to governments, a weapon imperatively needed. It may even be so. But whether, in the long run, it ever furthers the cause that employs it seems at least doubtful.

It seems to me unfortunate that the Houses of Parliament should at this crisis have resorted to the use of such a weapon. It must, surely, have been a mistake to place their constitutional aims against so distorted a background. Their claims were not strictly defensible on grounds of positive law. They could only finally be defended on a theory of what a rightly constructed state should be. Yet defensible they were. It would have been far simpler, and perhaps in the end more effective, frankly to have admitted their revolutionary character.

Authoritative misrepresentation of the character and aims of the Royalists may for a time have strengthened the position of the Houses. In the writings of 1642 and of 1643 there is a good deal of evidence of its effectiveness.[1] But in the long run the propagation of such illusions was likely to injure the cause the Houses represented. It is, admittedly, always dangerous to underrate an enemy; and that for more than one

[1] See pt. VII, ch. V, 1.

reason. To represent the Royalist party in the fashion adopted was grossly to underrate not so much its fighting as its staying power. If any hopeful settlement were to be reached, it could only come through understanding on each side of the views and aims of the other. It could not possibly be reached by mere military victory. The Houses were sowing seed with little or no perception of how it would grow.

§4. THE ATTITUDE OF THE KING

We may or we may not sympathize with the desire of the majority of the House of Commons in 1642 to bring about a radical change in the English constitution of government. We may or may not hold that it was wise in wishing to place supreme power in the hands of bodies representing classes already dominant and relatively wealthy and instructed. We may well think that a not very distant future proved that Pym and his followers were right, even though their effort was somewhat premature. But what, as students of the past, we have to try to understand, is the opinions of men in the seventeenth century. If we could relate those opinions to a body of ascertained and demonstrated political truth, a great light would doubtless be shed upon them. But we can do so, if at all, only in extremely slight degree. To take pains to relate them to our own opinions would be mere waste of time. Our own opinions are, as such, irrelevant; but sympathy with both sides in the conflict should help us to understand.

It is not possible to say exactly how the long series of declarations issued in the King's name during 1642 were actually drafted. Hyde, Falkland, and Culpepper must all, at least, have had a hand in them. But it may safely be said that they represented in the main the views of Edward Hyde. It may fairly be claimed for him that, of all the leaders on either side, it was he who best understood the situation. All through the disasters and vicissitudes that followed he kept his head cool and his eyes clear. In the end, as Mr. Feiling has said, he 'replanted the monarchy on a more legal if a more narrow foundation'.[1] It was substantially his conception of the constitution that triumphed in the Restoration. Yet it must be

[1] *History of the Tory Party*, p. 68.

said also that the difficulties inherent in the working of the constitution as he conceived it led actually to its breakdown within a short time. Pym, after all, was right, in the sense that a complete transfer of power from the King to the wealthier classes, seems to have been unavoidable.

'The King's resolution', wrote Hyde, writing long afterwards of 1642, 'was to shelter himself wholly under the law, to grant anything that by the law he was obliged to grant and to deny what by law was in his own power and which he found it inconvenient to consent to.'[1] It was the Royalist party that in 1642 was defending the law of the constitution as most generally understood at the time. It was as a conservative and 'constitutional' party that it took its stand on law. All through this critical year the official attitude of Charles I may fairly be described as having been strictly correct.

The conception of the constitution proclaimed by the King in 1642 was that which the House of Commons had championed in 1628. It was not, therefore, consistent with his earlier action or with what appears to have been his earlier idea of his constitutional rights. But he professed now to have learned better. He declared that when he summoned the Long Parliament he saw the mischief that had resulted from 'departing too much from the known rule of the law to an arbitrary power'. He had then already resolved to make full amends for mistakes and to redress all grievances.[2] How far he was sincere in making such declarations is a difficult question and one that hardly concerns us here. That in the earlier months of this year he had connived at his wife's endeavours to obtain foreign aid proves nothing. He may well have thought, then, that without such aid he could maintain no sort of position; and he did not understand how abhorrent such assistance was likely to be to the bulk of his possible supporters. That he was rarely quite candid was largely due to the fact that he was rarely quite clear. It may fairly be put to his credit that at this critical moment he took the best advice and the right line of defence.

'I desire', he said at Shrewsbury, 'to govern by all the known laws of the land. . . . I do solemnly . . . promise to maintain the just privileges and freedom of Parliament . . . and

[1] *History of the Rebellion*, bk. V. [2] *Declaration of August 12th.*

particularly to observe inviolably the laws consented to by me this Parliament.'[1] That, in the circumstances, was quite explicit. In the whole series of royal proclamations of this year no reference was made to any sort of extraordinary prerogative vested in the King. Charles was now claiming only such prerogative as the Houses had hitherto admitted to be his. The claim to a discretionary power to override or set aside law was tacitly and by clear implication abandoned. Resolutions of the Houses alone, the King declared, can no more make or alter law 'than our single direction or mandate can do'.[2]

It is in the King's Answer to the Nineteen Propositions that the fullest official statement of the Royalist view of the constitution is to be found. 'In this Kingdom', we read, 'the laws are jointly made by a King, by a House of peers and by a House of Commons chosen by the people, all having free votes and particular privileges. The government, according to those laws, is entrusted to the King.' The power of the King 'in this kind of regulated monarchy', is necessary for enforcement of law and for the security of subjects 'in their liberties and properties'. Further, 'that the prince may not make use of this high and perpetual power to the hurt of those for whose good he hath it . . . the House of Commons (an excellent conserver of liberty, but never intended for any share in government or the choosing of them that should govern) is solely entrusted with the first propositions concerning the levies of moneys . . . and the impeaching of those who . . . though countenanced by any surreptitiously gotten command of the King, have violated that law which he is bound to protect. . . . And the Lords, being trusted with a judicatory power, are an excellent screen and bank between the prince and people, to assist each against any encroachments of the other and by just judgements to preserve that law which ought to be the rule of every one of the three.'[3] It was pointed out also, that the fully admitted liability of the King's ministers to impeachment had been made practically more serious than before by the Triennial Act. Sovereignty or supreme power is to lie henceforth not with the King or with the Houses simply, but with the three jointly in a perfect balance of power.

[1] Clarendon. *History of the Rebellion*, bk. VI.
[2] *Answer to the Declaration of May 19th.* [3] *Answer to the Nineteen Propositions.*

The King's attitude was at first cautious and somewhat timid, for it was necessary to gain time. Gradually the tone of his answers and messages hardened; it became ironic and contemptuous and finally denunciatory. It cannot be said that he did not indulge in misrepresentation. He charged the Houses with bad faith, mendacity, and hypocrisy. He declared that they were dominated by 'a faction of malignant, schismatical, and ambitious persons',[1] who were endeavouring to establish a despotism of their own. But such misrepresentation was far less gross than that of which his own party was the subject.

The Houses, Charles declared, are not only claiming that they, of their own sole authority, can pronounce the country to be in danger and then, of their own authority, decide what must be done. They do not merely claim that they can declare law in general without reference to any particular case and without the King's assent. They say that the King is entrusted with power for the good of the kingdom and 'that they have a power to judge whether he discharge this trust or no'.[2] If he refuse to accede to any demand they choose to make, they declare that he has broken his trust and that they have a right to supersede his authority on the strength of that opinion. Yet 'did not the people that sent them look upon them as a body but temporary and dissoluble at our pleasure? And can it be believed that they intended them for our guardians and controllers in the managing of that trust which God and the law hath granted us? . . . Did they intend that the law itself should be subject to their votes and that whatsoever they say or do should be lawful because they declare it so?'[3] He declared in fact, to use modern terms, that they had greatly exceeded their mandate. 'Are people to be satisfied', he asked, 'with being told that calamity proceeds from evil counsellors whom nobody can name, from plots and conspiracies which no man can discover and from fears and jealousies which no man understands? . . . But it is no wonder', he added, 'that they who can believe Sir John Hotham's shutting us out of Hull to be an act of affection and loyalty, will believe that the Papists, or the Turks, persuaded us to go thither.'[4]

The Houses, Charles declared a little later, profess to desire

[1] *Answer to the Declaration of May 26th.* [2] Ibid. [3] Ibid. [4] Ibid.

that we should be true to our trust. But we should be false to that trust if, as they demand, 'we should be brought to abandon that power which only can enable us to perform that which we are sworn to'.[1] 'We call God to witness that as for our subjects' sake these rights are vested in us, so for their sakes as well as for their own, we are resolved not to quit them, nor to subvert, tho' in a parliamentary way, the ancient, equal, happy, well-poised, and never enough commended constitution of the government of this kingdom, nor to make ourself of a King of England, a Duke of Venice and this of a kingdom, a republic.'[2] Late in 1642 the series of royal mainfestoes closed with an appeal for support 'for the maintenance of God's true religion, the laws of the land, the liberty of the subject and the safety and very being of parliaments and this kingdom: for if all these ever were or can be in manifest danger, it is now in this present rebellion against us'.[3]

Whether or not he saw it himself, Charles was in effect proclaiming that the Tudor monarchy was dead. No vague talk about divine right confused his declarations. The will of God was referred to only in connexion with the law of the land. A good case could have been made out for the existence of an extraordinary prerogative vested in the King and incapable of exact limitation. But the upper classes had shown that they were practically agreed upon ruling that out; and the King, in this year, officially accepted the decision. It was now fully admitted that the King was bound to govern within the law and in the sense of the trust reposed in him by law for the good of his people.

There were, no doubt, a few who, in 1642, believed that the King held a divine commission of a nature that made him necessarily an absolute monarch. They must have been very few. Not only was no such view suggested in the royal declarations, but it was implicitly and even expressly disclaimed. Extreme 'divine right' absolutists did, indeed, become more numerous later, though they were always but a small minority. Hardly any, if any, writers claimed absolute power for the King till the war had made it a question how stable national government was ever again to be established. To deny that there could exist a right of forcible resistance to legally constituted

[1] *Answer to the Nineteen Propositions.* [2] Ibid. [3] *Declaration of December, 1642.*

authority did not, as was pointed out by Royalist writers, involve any theory of absolutism in the king. To hold that submission even to tyranny was better than civil war implied a denial of the view that the King was an absolute monarch by divine right. The Royalist party was essentially a constitutional party.

The attitude of the Royalists, as of the Parliamentarians, could only finally be defended by reference to principles fundamental in political association. It was no sort of answer to the contentions of the other side to say simply, *Nolumus leges Angliae mutare.* Actually, indeed, the King said a good deal more than that. But he was not arguing the case as a whole: at most he was indicating lines on which it could be defended. In the main he was simply stating the constitutional conception of the Royalist party. In doing so he was defining the issue far more clearly and completely than was done on the other side. Full statement of the complex case for Royalism was to come later.

The strength of the Royalist party lay, ultimately, in the fact that upon such constitutional arrangements as it proposed to establish, a very general agreement was possible. For the time, however, the dominant classes were more or less deeply divided. To the Royalists the 'mixed' constitution of their conception, 'equal, happy, well-poised', seemed the best possible. On the other side it was being in effect, though confusedly, asserted that a revolutionary change was needed, involving a transfer of power from the King to the House of Commons. If there be any distinct issue upon which the civil war can be said to have begun it was the question thus posed. All through 1643 controversy turned mainly upon this issue.

There seems to be little ground for saying that the war resulted from differences over religion or Church government. There were many, it is true, who, at the time, saw it like that. But the claim of Parliament that it was fighting to save religion was radically absurd. There was as much religion on one side as on the other. Real Puritanism was, I think, as weak in the House of Commons as Laudianism was among the Royalists. The most representative Royalists were as Erastian and almost as anti-clerical as were the Houses. Religious enthusiasm and idealisms of various kinds and qualities played a considerable

part in the military and political struggles that followed, as well as in the conflict of ideas. But far too much, it seems to me, has been made of the religious or ecclesiastical difficulty. Parliament was dominated by hatred and fear of Catholicism and of everything associated with it. In that it did not differ much from its adversaries. It was increasingly aware of the need of controlling and making use of the pulpit. It talked in 1642 as though it had ready a complete scheme for the reform of the Church. Had it had a free hand, it might, perhaps, have endeavoured to establish a national church, Calvinistic in doctrine but strictly subordinated to itself. But had it also endeavoured to force upon everybody conformity to that church, it must quickly have discovered the impossibility of doing so. Time soon showed that among the supporters of Parliament there was no sort of agreement as to what should be done about religion. Out of the conflict there arose, indeed, later, what we call the question of toleration. It was a question deeply dividing and of the utmost importance. But in 1642, events had not yet forced consideration of it upon either side.

Far too much, also, has, I think, been made of the practical importance of Puritan enthusiasm. There was never really very much of it, though there was more later than in 1642. Much of the idealism that was generated in the course of the conflict was in no sense or degree Puritanic. The popular notion that the war was won by Puritan enthusiasm appears to have very little foundation in fact.

'Publicans and sinners on the one side', said Chillingworth, 'scribes and pharisees on the other.' It was a witty saying and it held a little truth, but not much. Truth is always far too complex to be stated in epigram. There were numbers of unscrupulous and dishonest scribes on both sides and Royalism had its pharisees. There were many on both sides as greedy of material gains as any publican could be supposed to be. On both sides there were sinners of all sorts. I see no ground whatever for attributing to either side a definite moral superiority.

PART VII

THE CONTROVERSY, 1642–1644

I. PREFATORY

Chapter I

THE SUBJECTS OF DEBATE

THE Houses of Parliament in their manifestoes of 1642 had failed to make clear the issues on which there was to be war. They had stated what seems to have been their real aim only by implication. Their declarations had been so confused and ambiguous that it was not possible to be sure what was meant. The entirely false picture they had given of the Royalist opposition had further increased confusion. The conservative attitude of official Royalism was indeed consistent and fairly well defined. But on the other side it was possible for men to hold entirely different and even incompatible views of the purpose of the war. It was possible to believe that Parliament was fighting for the establishment of a new constitution or for a new ideal of national government. It was also possible to believe that it was fighing for religious reformation or simply for the defence of true religion or, even, to bring about the final downfall of anti-Christ. It was possible to agree with the Royalist conception of the constitution and yet, like Baxter, join Parliament for the sake of religion. It was equally possible to care nothing for religion and yet join Parliament. It became even possible to believe that the purpose of the war was to establish a 'popular' or democratic form of government. Hence arose the confusion and divergence of the views expressed on the Parliamentarian side in the controversy of the years 1642 and 1643.

From the time when the King's rejection of the Nineteen Propositions brought England to the edge of civil war, there was poured forth, from both sides, a flood of pamphlets and treatises of all degrees of slightness or elaboration. From July 1642 till the end of 1643 controversy turned almost exclusively on the claims and counter-claims officially made in the declarations of 1642. But it was only during that short period that the main subjects of controversy remained

unchanged. Later, as the position developed so did the character of controversy alter. Already in 1644 a great change is apparent. Controversy was, indeed, then and even later, still being to some extent continued on the earlier lines. But already in 1644, the dispute was not so much between Royalists and Parliamentarians as between different sections of the latter. It was in that year that began the great controversy over religious toleration. After 1644 there rapidly developed a quite new situation, in which the ferment of thought, set up by war and controversy, produced divergent currents in many and unexpected directions.

The mainfestoes of 1642 raised many particular questions of constitutional law and one, far wider, that included all of them. Has the King a real right to veto Bills presented by the Houses? Have the Houses an unlimited right to declare what is law of their own authority? Many writers were content merely to give some sort of answer to these and similar questions. But the larger issues could not be ignored. If the King claims powers denied to him by the Houses of Parliament or if the Houses claim rights the King denies them, how is the matter to be decided? Or, again, in case of complete disagreement on some question of policy, involving perhaps national security, who is to decide? Are the Houses or is the King to give way? You may say that supreme power, and therefore power to decide the question, lies only and jointly with what men often called the three 'estates' of Parliament. If you say that, you say that no one can decide, that the question is unanswerable and there is no escape from the deadlock. But whatever answer was given involved or implied an answer to the yet wider question: Where in the English commonwealth does supreme power, or sovereignty, reside?

The outbreak of war raised of itself another question, quite distinct and yet more radical. Is forcible resistance to the determinations of the supreme authority ever justified and, if so, under what conditions? Whether the King or the House of Commons be conceived as supreme does not affect that question. In either case the question is the same. But very few really put the question generally or even saw it clearly. In this first period of conflict there seems to have been a very general agreement that forcible resistance to the supreme

authority was never justified. Both sides claimed a supremacy and asserted the wrongfulness of resistance. The Bible, frequently appealed to, gave no help, unless, as both sides did habitually, one begged the question. Where is to be found in England the higher power of St. Paul?

That main question could not be satisfactorily answered by mere reference to positive law or custom. It was not, finally, a question of what was actually recognized, but of what should be recognized. So all the fundamental questions of political philosophy were opened up. What is the end and what the source of political authority? How and whence is it derived? How is it conditioned by the nature of man's will and by his needs in society? Why, after all, should any of us obey anybody, unless we see that it suits us to do so?

That last question was, indeed, as yet being considered by hardly any one. No one, perhaps, but Hobbes yet saw the ultimate difficulty. It was assumed on all sides that men were absolutely bound to obey law. But on both sides attempts were made to base their claims on some theory of the nature of political society. Both sides claimed that they were supported by laws fundamental.

Naturally, however, the great majority of those who, on one side or the other, published their views, made no attempt to answer any fundamental questions. They did not proffer any sort of philosophical justification of their attitude or show any sense that one was needed. Nearly all of them were definitely partisan and their object was simply to persuade the indifferent, the ignorant, and the neutral, that theirs was the party that ought to be supported. They were often perfectly content to beg the question or were simply unaware that they did so. Many were content to repeat, on this or that point, what they found in the official declarations of this side or the other. Not infrequently they made us of the very phrases of those documents, without saying where they had found them.

It has been said that the Royalist case was argued too exclusively on grounds of law. If, however, we look at the whole body of Royalist publications in these two years, we get a different impression. It would be far more accurate to say that while Parliamentarian writers in general argued too much on grounds of law, Royalist writers relied far too much on

Scripture. It is a different matter if we take into account only those serious thinkers who, on either side, tried to deal systematically with the main questions. The ablest writers among the Parliamentarians were either elaborating by reference to law and history, a theory of the English constitution, or they were expounding a view or a theory of the principles of political association and the nature of political authority. The nature of the claims they had to defend compelled them to do one or the other. The Royalists, on the other hand, were under no such compulsion. They were mainly occupied in criticizing the theories of their opponents. The dependence of their own position on what they called 'known laws' seemed to relieve them of the necessity of theorizing. They were on the defensive: it was for the adversary to prove his case. They did indeed lay down general principles and could not possibly avoid doing so. But almost all the ablest of the Royalist writers took their stand on a theory of the constitution that was, for them, ready made. Few of them felt any need to explore foundations. More or less clearly they saw that such exploration was dangerous.

But generalization of this sort is always more or less misleading. Widely diverging tendencies of thought are apparent on both sides from the first. Each side was defended from very different points of view. To say, crudely or elaborately, that the Royalists thought this and the Parliamentarians that, would be simply untrue.

Chapter II

PLEAS FOR MODERATION AND COMPROMISE

WHETHER or no the questions at issue could be satisfactorily answered, they certainly could not be answered by fighting. It might well have been at least suspected that war was likely to produce a result that neither side desired. Perception of these facts was far from being entirely absent. A small number of writers in these first years pleaded in vain for moderation, for tolerance and respect for adverse opinion and for compromise rather than war. Early in 1642 an anonymous writer pleaded for moderation on both sides, declaring that civil war ought at all costs to be avoided.[1] A little later another writer declared that though the Houses of Parliament were in the right, yet every one should abhor the thought of taking up arms on either side.[2] Preaching that summer in London, Thomas Swadlin[3] pointed out that both sides professed to pursue almost the same ends. 'The cause seemeth alike on both sides', he declared. 'But whether side hath a good or a bad cause, who knoweth on which side the victory is like to fall? God ordereth battles, He giveth victory to whom He will, but commonly and ordinarily He giveth the success according to the means that is used. Insomuch that if the worse part be better prepared, if they have more men in number and more valiant, if they have more store of ammunition and better, they are like to prove God's rod to punish his children and when they have done that work they are like to be cast into the fire.'[4] He prayed that there might be no victory for either side. His perception that military victory would prove nothing to any purpose was probably shared by many. 'Success is the weakest argument that can be alleged to prove the goodness of a cause', declared another writer,

[1] *The State of the whole Kingdom*, May 1642, B.M. E. 148 (24).
[2] *A Plea for the Parliament*, June 1642, B.M. E. 152 (11).
[3] He held the cure of St. Botolph, Aldgate, from 1635 and had become celebrated as a preacher.
[4] *The Soveraigne's Desire, Peace.* Sermon I, pp. 15–16. The three sermons of which this consists were not published till 1643.

'and the wickedest men have most used it.'[1] In October 1642, Thomas Swadlin was imprisoned, his living was sequestered and his wife and children were turned out of doors.

In September 1642, Francis Quarles, the religious poet, published a tract which shows, among other things, that he had studied his Machiavelli.[2] He argued that, for each side, almost any settlement would be better than the risk of defeat and for people in general any compromise better than civil war. Whatever changes, he remarks, the war may bring about 'a cobbler shall be but a cobbler still'. All over the country, another writer declared, there is a general inclination to peace. 'There was never any civil war', he added, 'wherein the good of the people was not most cried up and yet least intended.'[3]

So hopelessly late as March 1643, was published rather a remarkable tract of the same general purport.[4] As for victory, declared the anonymous author, 'it is not easily conceivable upon what ground any judicious man and lover of his country can rationally desire it'. Both sides maintain that they are fighting in defence of law and religion and any sensible man may well believe that they are honest. He suggested that the root of the trouble was passionate intolerance of adverse opinion. What was needed, he declared, for a rational settlement was the recognition by each party of the honesty and good intentions of the other. Once that recognition was made, an accommodation could be reached. He saw no other possible remedy.

But by far the most notable and persistent of all advocates of moderation and compromise was that Thomas Fuller, whom Coleridge described as the most sensible great man in an age of great men. He is now, perhaps, best known by his *Church History of Britain* and by *The Worthies of England*. But he has even better titles to fame. Charles Lamb spoke of him as a 'dear, fine, silly old angel'. At only one word of that description am I at all inclined to cavil. If by 'silly' Lamb meant simple, Fuller was not that. He had only such simplicity as goes with entire honesty. Fuller had become Rector of Broadwindsor in Dorset in 1634. There he had written his

[1] *A Loyal Subject's Belief*, Edward Symmons, May 1643. B.M. E. 103 (6).
[2] *Observations concerning Princes and States, upon Peace and Warre.*
[3] *An Answer to a Seditious Pamphlet*, February 1643.
[4] *Queries and Conjectures concerning the Present State of this Kingdom*, March 1643, B.M. E. 91 (21).

Historie of the Holy Warre and another book, *The Holy State and the Prophane State*, both which, published in 1642, rapidly became popular. In 1642, he was in London and his sermons attracted so much attention that in 1643 the authorities practically compelled him to leave the city. He went, then, to the King's headquarters at Oxford and there his advocacy of mutual respect and tolerance and rational moderation gave as much offence as it had in London. He had to leave Oxford also and became for a time chaplain to Ralph Hopton in the west country. From that time onwards he continued, with humorous common sense, to plead for coolness and sanity and to ridicule pleasantly the pretensions and dogmatism of partisans. He was attacked from both sides, by Heylyn as well as by Saltmarsh, and the good humour of his replies proved that he practised what he preached. Common sense, a healthy scepticism of all clear-cut theories and a dislike of all fanatical enthusiasm, characterize Fuller. Add a strong sense of the ludicrous and you have what is called his moderation.

We talk, Fuller was saying in 1642, of a reformation of religion, and it seems indeed to be badly needed, for this war is a disgrace to our religion.[1] We talk of reforming the Church; and the Church needs reform, for, like all human institutions, it can be bettered. But what is it we expect? 'A perfect Reformation of any Church in this world may be desired but not hoped for.'[2] For the Church, 'being a body consisting of imperfect men . . . the body must needs be imperfect also'.[3] The reformation that is needed, first and most, is a reformation of ourselves. Let us begin by ceasing to vilify and abuse each other; let us banish 'all words and phrases of contempt and reproach'. He instances the mischievous word 'malignant'. 'Let us have no other Christian name than the name of Christians.'[4]

'It is the sins of the whole kingdom', he declared, 'which break off our hopes of peace. . . . The city complains of the ambition and prodigality of the courtiers; the courtiers complain of the pride and covetousness of citizens; the laity complain

[1] *A Fast Sermon*, December 1642, printed January 1643. It is usually referred to as the sermon 'On Peace'.

[2] *A Sermon of Reformation*, July 1643, p. 24. It was this sermon that was criticized by John Saltmarsh and it was to this proposition that he particularly objected.

[3] *Truth Maintained*, printed at Oxford, March 1644. This was Fuller's answer to Saltmarsh.

[4] *Sermon on Peace*. He uses almost the very phrases of L'Hôpital in 1561.

of the laziness and state-meddling of the clergy; the clergy complain of the hard dealing and sacrilege of the laity; the rich complain of the murmuring and ingratitude of the poor; the poor complain of the oppression and extortion of the rich. Thus every one is more ready to throw dirt in another's face than to wash his own clean.'[1] There can be no real reformation of anything, Fuller insisted, that does not begin with ourselves. 'At the last day of judgment, when God shall arraign men and say: Thou art a drunkard, thou art an adulterer, thou art an oppressor, it will be but a poor plea for them to say: Yea, Lord, but I have been a public Reformer of Church and State.'[2]

'Pray daily to God', Fuller wrote in 1643, to 'send us a good and happy peace before we be all brought to utter confusion. . . . The longer I see this war the less I like it. . . . Not so much because it threatens temporal ruin to our kingdom, as because it will bring a general, spiritual hardness of heart.'[3] Nothing but desolation can be expected from its continuance. 'The sword is blind and cannot discern between truth and error.'[4] The lack of charity and passionate unreason that brought about the war, and the pillage and lying, the hatred and bitterness, the war has brought, give no promise of better things to come. He questioned whether, in 1644, guns or printing did the more mischief.[5] 'If God', he wrote later, 'should have no more mercy on us than we have charity one to another, what would become of us?'[6] Any good results that accrued from the war seemed to Fuller accidental. 'One, if not the only good which our civil war has produced, is that in the ransacking of studies, many manuscripts which otherwise would have remained concealed and useful only for private persons, have been printed for the public benefit.'[7]

Few in number as those were who pleaded for reconciliation, we may be sure that they represented a proportionally far greater number. Among the great body of neutrals there must have been very many who shared their views. It was a weakness in their case that while they argued for a peace that could only come through compromise, none of them made

[1] *Sermon on Peace*, pp. 14–15. [2] *Truth Maintained*, 1644, p. 46.
[3] Epistle to his London parish. In *Truth Maintained*. [4] *Sermon on Peace*, p. 13.
[5] *Truth Maintained*, p. 65. [6] *A Sermon of Contentment*, 1648.
[7] *Church History of Britain*, 1665, bk. IX, Dedication.

definite suggestions as to the form it should take. But that weakness was not essential, since it cannot be said that compromise was impossible.

One might be tempted hastily to declare that Fuller and the rest were altogether right. But it was not so: their view was far too partial. They were right in thinking that military victory might wreck the hopes of both parties and produce an intolerable position. They were right, too, in thinking that the war would make all difficulties in the way of settlement more difficult, by producing bitterness, exasperation and vindictiveness. But it was not true that the war was merely or mainly the result of passion and unreason and of lack of respect for adverse opinion. Two profoundly different conceptions of how the country should be governed were in conflict. Though compromise between them was not impossible, no compromise, it seems, could have worked for long.

Nor were the would-be peacemakers right in believing that no good could come of the war. The war, indeed, did not directly increase freedom: it did, rather, the reverse. But it set up a great ferment of ideas, discussion, and speculation, and that, of itself, may be considered a good thing. Much of the thought evolved was, it may be said, on lines that proved unfruitful. But the multiplication of more or less antagonistic sects and parties that grew and flourished under the stimulation and in the disorder of the war, at least forced to the front the only possible solution of the religious difficulty.

'As for all particular forms of church government, ceremonies, and outward manner of divine worship', wrote Fuller, 'it is erroneous to fix or place the life or essence of Godliness therein.' God has no preference for particular parties. 'In one and the same nation, he that feareth Him and worketh righteousness, of what Sect, Side, Party, Profession, Opinion, Church, Congregation soever he be, is accepted with Him.'[1] But that was in 1648: he had said nothing so explicit earlier. It may be that he, too, had learned from the war. For the war and its immediate results tended to prove the impossibility of establishing by force national unity in religion. In that way, at least, it made for the freedom of thought which is the condition of progress.

[1] *A Sermon of Contentment*, 1648.

II. THE PARLIAMENTARIANS

Chapter I

PRELIMINARY

WRITERS on one side of the great controversy sometimes set themselves to answer directly particular writings on the other. Despite that fact, it is necessary to deal separately with Parliamentarian and with Royalist thought. Any other arrangement is wholly impracticable, unless, at least, we confine our attention to a few leading writers. To do that would give an entirely false impression. Since Royalist writers were largely engaged in criticism, it will be best to commence with the supporters of Parliament.

Among the Parliamentarian writers of 1642–1643, Henry Parker, William Prynne and Philip Hunton were outstanding in power and ability and in thoroughness of exposition. Rutherford's *Lex Rex* was not published till 1644, and exhibits no originality unless in its phrasing. It is important chiefly as illustrating a tendency in that year towards adoption of some of the more extreme views expressed earlier. In the second rank of writers are Charles Herle and Jeremiah Burroughs. Herle, now Rector of Winwick in Lancashire, was later one of the most prominent members of the Westminster Assembly. Burroughs, also an ordained minister of the Church of England, had been suspended by Bishop Wren, chiefly for refusing to read the *Book of Sports*. Later he had been deprived for denouncing the war against the Scots. In the Westminster Assembly he was one of the few representatives of Congregationalism. John Goodwin, the most original of them all, did his best work later and in another, quite different, connexion. His distinctive contribution to the controversy of these years represented only the view of a very small minority.

Of the three leading writers, Prynne alone was at all representative of ordinary Parliamentarian argument and opinion. Relatively few of the apologists for Parliament accepted or reproduced the theories of Parker. Royalists paid him more

attention than did his own side. The same is the case with Hunton, who was still more isolated and had very few if any disciples. More typical than the writings of either was Prynne's *Sovereign Power*: a highly elaborated defence of the claims made by the Houses in 1642 and a fearless exposition of what was logically involved in them. These three writers require separate treatment and will be considered first of all. A large number of writings will then remain to be dealt with.

Something may here be said on the question as to how far Parliamentarian thought was influenced by earlier or by foreign writings. It is a question that cannot be answered with assurance or with accuracy. Echoes of and references to Buchanan and the *Vindiciae* occur frequently and appeal was often made to Fortescue. A good deal of what is said by Parker and Prynne might have been taken straight from Huguenot writings of the sixteenth century. But such repetition of what had become commonplace proves nothing. Prynne, of course, refers to innumerable authors, with little or no regard to their very different opinions. The evidence suggests that English thought was to some extent influenced by the *Vindiciae* and by Buchanan, Bodin, and Machiavelli. But on the whole, opinion in England does not seem to have been seriously affected by anything that came from outside.

Chapter II

THE THEORY OF HENRY PARKER

HENRY PARKER'S *Observations upon some of His Majesty's late Answers and expresses* was published in July 1642. By that time he was already well known as the author of *The Case of Ship Money* (1640) and of *The True Grounds of Ecclesiastical Regiment.* His *Observations* quickly drew answers from a number of Royalist writers; from Ferne and Dudley Digges, Thomas Morton, and Sir John Spelman among others. In August 1642, Parker published *The Observator Defended* in reply to anonymous *Animadversions.* He was defended, or Ferne was criticized, by Charles Herle, William Bridge, and Jeremiah Burroughs and by the authors of certain anonymous tracts, among which the *Contra Replicant* may possibly be Parker's own. An anonymous tract entitled *A Reply to the Answer* was directed especially against Spelman. The controversy continued throughout 1643 and even beyond. In 1644, Parker further elucidated his views and made his final answer to his critics in a tract entitled *Jus Populi,* which should be read in connexion with the *Observations.*[1]

Parker's treatise seems to have been especially designed as a reply to the King's official *Answer to the Nineteen Propositions.* It was, in effect, a reply; but it was a reply that took little account of the King's actual assertions. Parker was unable to refrain from misrepresentation of his opponents. He wasted considerable part of his short treatise[2] in refuting assertions made by unimportant writers who certainly did not represent the view formally and officially taken at headquarters. His treatise was as much a piece of special pleading, as was Prynne's far more elaborate work. For all that, the *Observations* was not only the first but almost the only attempt made in these years to find a quasi-philosophical justification for the position Parliament had taken up. Its merit consists chiefly in the fact that it is not in the main an argument from precedent or the

[1] In May 1643 was published *A Political Catechism,* which has been attributed to Parker.

[2] It fills only 47 pages in the original edition.

letter of law or from imaginary history. Prynne argued from the text of Magna Carta that the King was bound to pass all Bills the Houses saw fit to insist upon his passing. Parker reached the same conclusion, arguing from what he called 'the charter of nature' and the necessary character and powers of representative bodies. He attempted to find a basis for the claims of the Houses in a political philosophy.

'When the King and Parliament disagree', he wrote, 'and judgement must be supreme either in the one or other, we must retire to ordinary justice. And there we see, if the King consent not with the ordinary Judge, the Law thinks it fit that the King should subscribe rather than the Judge. . . . And if this satisfy not we must retire to the principles of Nature.'[1] That is a difficult retirement; and in making it Parker fell into a confusion that leaves it gravely doubtful what he meant.

What has, he declared, first of all to be considered is 'the efficient and final causes' of political authority, regal or parliamentary. The King appeals to God and the Law. But God is no more the author of one kind of authority than of another and the law of a constitution 'is not to be understood to be any special ordinance sent from heaven by the ministry of angels or prophets. . . . It can be nothing else amongst Christians than the pactions and agreements of such and such politic corporations.'[2]

These original pactions and agreements were, apparently, conceived as formal and explicit. No distinct statement, however, is made on the point: the difficulty of such a supposition was perhaps suspected. Parker concerned himself only with the nature of the transaction. 'All natural power', he remarks, 'is in those that obey.'[3] The pactions effected a delegation of this power from the body of the people concerned to some one or something. 'Power', says Parker, 'is originally inherent in the people, and it is nothing else but that might and vigour which such and such a society of men contains in itself; and when by such or such a law of common consent and agreement, it is derived into such and such hands, God confirms that law. And so man is the free and voluntary author, the law is

[1] *Observations*, p. 44.
[2] Ibid., p. 1. Is there some odd confusion behind the words 'amongst Christians'?
[3] Ibid., p. 8.

the instrument, and God is the establisher of both.'[1] The people, therefore, is 'the true efficient cause of power'.[2]

But Parker makes it quite clear that, in his view, the people conferred not only its collective might but also real authority or right to command. Just as in his *True Grounds*, his language suggests that he identified power and authority. Authority was granted or conferred by the people along with mere power and must have been, for the two things are inseparable. But Parker did not make the gross blunder of saying that power and authority are actually the same thing. He implied only that under all normal circumstances they necessarily go together. 'They which may not compel', he says, 'may not command';[3] and conversely, apparently they who can compel have the right to command. Parker, I think, was rather confusedly saying that authority is created by a recognition of right to command. But that recognition necessarily gives the power to compel and nothing else can normally give it. If you cannot compel there can be no such recognition and consequently no authority. If you can compel, you must needs have the recognition that gives authority. This, certainly, is not true of governments that rest merely on armed force. But Parker was not considering any such case.

Power, and therewith authority, being thus conferred by the people's own voluntary act, it follows that the grant of it can be made conditional. Parker, indeed, argued that it must be so made. Not only is it unreasonable to suppose that any people would confer unlimited authority upon its magistrates, but 'the charter of Nature entitles all subjects of all countries whatsoever to safety, by its supreme law'.[4] Man's sinful nature, indeed, makes some sort of government a sheer necessity. Wolves and bears are not 'so fell, so hostile, and so destructive to their own kind as Man is to his. In some respects Man is more estranged from political union than Devils are. . . . Amongst men nothing but cruel enmity is to be seen.'[5] But it is precisely that men may enjoy the security to which the charter of Nature entitles them, that government was established. Even if unlimited authority were formally established, the exercise of it would necessarily be limited by the conditions

[1] *Observations*, p. 1. [2] Ibid., p. 2. [3] *The True Grounds*, p. 23.
[4] *Observations*, p. 4. [5] *Jus Populi*, 1644, p. 43.

implied in the purpose of the grant. There would remain always 'tacit trusts and reservations'.[1]

To any one acquainted with the *Vindiciae contra Tyrannos* or with the *De justa Reipublicae . . . authoritate* there would have been in all this nothing either new or strange. Parker might, so far, have lifted his theory bodily from writings of the sixteenth century, Protestant or Catholic. There is no reason to suppose that he had actually done so. The ideas he expressed were in themselves simple, nor was there any need to go to France for them or indeed to look further than the position in England at the moment. But though such views must have been fairly familiar to the educated, yet it seems that no Englishman before Parker had definitely announced them as his own. To very many people in England they would have been strange and startling; which, perhaps, is the main reason why Parker's little book attracted so much attention.

Parker did not make the blunder of supposing that he knew exactly what had happened on that momentous occasion when the somehow gathered 'people' made its act of delegation. On that question he, rather waveringly, followed Buchanan. He suggests that at first there existed laws made by 'common consent' without any arrangements for their enforcement. It was then discovered that under such conditions 'law was a vain and void thing'.[2] The establishment of magistracy ensued upon this discovery; but thereby a new difficulty was created. There was, now, no practical means of preventing abuse of the magistrate's delegated power and the breach of the conditions upon which it had been granted. 'Princes', Parker wrote later, 'were created by the people, for the people's sake, and so limited by express laws as that they might not violate the people's liberty.'[3] But restraining laws were easy to make and almost impossible to enforce. Popular tumult and insurrection were the only checks upon tyranny. 'Till some way was invented to regulate the motions of the People's voluminous body, I think arbitrary rule was most safe for the world.'[4]

'Long it was ere the world could . . . find out an orderly means whereby to avoid the danger of unbounded prerogative on this hand and too excessive liberty on the other and scarce

[1] *Observations*, p. 4.
[2] Ibid., p. 13.
[3] *Jus Populi*, p. 1.
[4] *Observations*, p. 14.

has long experience yet fully satisfied the mind of all men in it.'[1] But at length, with the invention of representative institutions, the way was found. They were developed as a solution of the problem how to find means of making effective the fundamental conditions of the grant of power. 'That princes may not be now beyond all limits and laws, nor yet left to be tried upon those limits and laws by any private parties, the whole community in its undivided majesty [*majestas?*] shall convene to do justice . . . a few shall act for many; the wise shall consent for the simple, the virtue of all shall redound to some and the prudence of some shall redound to all.'[2] Thus, 'we have found out an art and peaceable order for public assemblies, whereby the people may assume its own power to do itself right, without distrubance to itself'.[3]

Parker found ready to hand the theory or the fiction that in Parliament every Englishman was present. He took it seriously, even literally, for it exactly suited his purpose. He gave to the notion all possible emphasis. 'The whole Kingdom', he says, 'is not so properly the author as the essence itself of Parliaments.'[4] Parliament is 'the very people itself, artificially congregated'.[5] It 'is indeed the State itself'.[6] The King represents the people only for certain purposes and in certain cases.[7] He is bound not only by law but by the implications of the mode of his establishment. But Parliament is bound by nothing. For 'any legal purpose' it must be regarded as the people itself. Only through it can the people speak or act. There can be no rightful resistance to its determinations. To say that the people is above Parliament is absurd: Parliament and the people are inseparable.[8] In Parliament law is made by common consent and it is every man's duty to obey. Nothing could be more 'pernicious' and 'perfidious' than any sort of rebellion against Parliament. 'No peace', he had written in 1641, 'can ever be in that land where any considerable party shall not acquiesce in the common statutes of the land.'[9]

From all this Parker might well have concluded that the King was but a servant and agent of the sovereign Houses of Parliament or even simply of the House of Commons. Actually, he definitely claimed for the Houses only what they themselves had

[1] *Observations*, p. 14. [2] Ibid., p. 15. [3] Ibid., p. 15. [4] Ibid., p. 5.
[5] *Jus Populi*, p. 18. [6] *Observations*, p. 34. [7] *Jus Populi*, p. 19.
[8] Ibid., p. 18. [9] *True Grounds of Ecclesiastical Regiment*, p. 85.

claimed. He declared that the King was bound to pass all Bills the Houses judged to be 'necessary'; that they ought never to be dissolved without their own consent; that ministers of state should be appointed by them or at least only with their approval; and that they must be recognized as possessing a power to make general declarations concerning what is law. These were but modest claims if the Houses were 'indeed the State itself'. But Parker did not distinctly connect the claims he made with that formidable assertion. His argument seems sometimes to imply one thing and sometimes another. 'We need not fear', he says, 'but the King is bound to consent to new laws if they be necessary. . . . We conceive it our Parliamentary right and custom that nothing necessary ought to be denied.'[1] Clearly it must be the Houses who judge of the necessity. Elsewhere he says that, ordinarily, law is made partly by the King and partly by the 'kingdom'.[2] But what meaning has this if the King has no choice about it?

In spite of his unfortunate appeal to 'Parliamentary custom', Parker may have meant that the judgement and will of the Houses being the judgement and will of the sovereign people, the King is bound to pass such Bills as they deem necessary. But what is one to make of what he says about the declaratory power? 'The Parliament', he wrote, 'has an absolute, indisputable power of declaring law.' But this it appears, is not because Parliament is the State itself, but because, since there must be such a power, 'it can nowhere rest more safely than in Parliament'.[3] It cannot, he declared, be allowed to rest with the King. 'Grant the King supreme interpreter and 'tis all one as if we granted him to be supreme maker of law; and grant him this and we grant him to be above all limits, all conditions, all human bonds whatsoever.'[4] Grant the same power to the Houses and, as the King had pointed out, the same result followed. But Parker confounded confusion by adding that 'this power is not claimed in ordinary, nor to any purpose but to save the kingdom from ruin'.[5]

In his writings on the Church question, Parker insisted strongly on the idea that in every State there must be a power supreme in all causes alike, and that this sovereignty cannot

[1] *Observations*, pp. 4, 5. [2] Ibid., p. 16. [3] Ibid., p. 45.
[4] Ibid., p. 44. [5] Ibid., p. 45.

be divided.[1] In the *Observations* he made no such sweeping assertions on this point as appear in the *True Grounds* and in *Jus Populi*. 'That there is an arbitrary power in every State', he says, ''tis true, 'tis necessary.'[2] Entrusted to one man such power may be dangerous but when it is in the hands of Parliament we are safe. 'A community can have no private ends . . . and no age will furnish us with one story of any Parliament freely elected and held, that ever did injure a whole kingdom or exercise any tyranny. . . . The composition of Parliaments . . . takes away all jealousies, for it is exactly and geometrically proportionable and all the State do so orderly contribute their due part therein.'[3]

Taken by themselves, these rather astonishingly bold assertions make it seem that Parker was claiming for the Houses that arbitrary and absolutely supreme power of which he had written earlier. Unfortunately, in other places he argued as though he conceived that this arbitrary power existed only for use in emergency, or in times of imminent danger. When the whole commonwealth is endangered and the King will not act, he declared, then 'the State convened' may 'lawfully of itself provide for its preservation'.[4] One might suppose that the State convened could always do so. 'If the King will not provide for the kingdom's defence, it may do so itself.'[5] 'The supreme of all human laws is *Salus Populi*', he had declared in 1640. 'Rather than a nation shall perish, anything shall be held necessary and legal by necessity.'[6] So he concluded 'in matters of law and state both, where ambiguity is, some determination must be supreme . . . and there can be nothing said against the arbitrary supremacy of Parliaments that far more, upon better grounds, may be said against the arbitrary supremacy of the King'.[7] But what need of any such argument from expediency if the Houses of Parliament be the State itself?

But did Parker really conceive of the Houses of Parliament as normally equivalent to 'the whole community in its undivided majesty'? Or did he mean that it is only under extraordinary circumstances that they become 'the State convened'? His language makes his meaning uncertain. One thing only is quite clear. Parker may have meant to suggest that supreme

[1] See V, 5. Parker himself never uses the word sovereignty.
[2] *Observations*, p. 34. [3] Ibid., pp. 22, 23. [4] *The Observator Defended*, p. 2.
[5] *Observations*, p. 16. [6] *The Case of Ship Money*, 1640. [7] *Observations*, p. 36.

authority lay always rightfully with the Houses alone, though he did not quite venture to say so. But he cannot, apparently, have meant that it lay with the House of Commons. Dudley Digges pointed out, that if his argument proved anything, it proved that the House of Commons could overrule the Lords as it could overrule the King.[1] But no more than Prynne did Parker ever disassociate the Houses.

It may be that he was anxious not to claim more for the Houses than they had themselves claimed. It is possible too that he felt that if he were proving anything, he was proving too much. It may seem that in trying to escape from his difficulties he fell into self-contradiction. In that case, even though portions of his argument might be usefully suggestive, he was talking nonsense. But that so clever a man as he certainly was should talk mere incoherent nonsense appears at least unlikely.

Early in 1643 there was published a pamphlet by an anonymous author, who seems to have derived most of his ideas directly from Parker's *Observations*.[2] But in his version, though much ambiguity remains, the apparent contradictions disappear. The powers and privileges of Parliament are, in his view, to be regarded partly as positive limitations of the authority conferred upon the King, and partly as powers 'reserved' by the people to itself, 'as the extreme resort for extraordinary emergents'.[3] This extra legal authority of Parliament is 'parcel of the original power naturally in the people'. Though under normal conditions the Houses are as much bound by ordinary law and custom as is the King, yet 'radically and fundamentally by representation' the Houses of Parliament are 'the whole kingdom'.[4] The supreme power of the people rests always with them, 'though dormant till it be by the Parliament thought fit to be wakened'.[5] It is always for the Houses to judge whether the King is abusing or exceeding his powers, and if they judge that he is false to his trust, they are entitled to take any action they deem necessary in the circumstances. It is said, the writer added, that the action that has been taken may lead to the destruction of the monarchy in England. It is more likely to save it by making it for ever

[1] *The unlawfulness of Subjects taking up Arms against their Sovereigne*, 1643, sec. III.
[2] *A Soveraigne Salve to cure the Blind*, April 1643. B.M. E. 99 (23).
[3] Ibid., p. 3. [4] Ibid., p. 8. [5] Ibid., p. 9.

unnecessary to do such things again. But in any case, he declared, public welfare must not be sacrificed to the maintenance of a particular form of government. This last remark was his only really original contribution to the discussion.

Indubitably, Parker presented his views confusedly and with an ambiguity that may be, in part, intentional. But the anonymous inventor of the *Sovereign Salve* seems to me to have understood what he meant. In Parker's view not only were the King's powers definitely limited by law, but his right to exercise them was conditional on their being used for public welfare. Nevertheless the people have 'entrusted their protection into the King's hands irrevocably';[1] and they, and therefore Parliament itself, are bound by their grant. So long as the conditions of that grant are respected, the King's lawful power cannot be taken from him by any one nor may its exercise be resisted. 'I am as zealously addicted to monarchy', Parker declared, 'as any man can without dotage.'[2]

On the other hand, the representative body is, necessarily, the repository of the people's will and judgement which it alone can express. The power inherent in the people, which created magistracy, is inherent in the Houses. No legal arrangements can alter that fact. It is implied in the nature of a representative body, that it can judge whether the conditions on which power was entrusted to the King are being respected. It must therefore be competent to declare what that law is which the King is bound to respect. Similarly the King must needs be under an obligation, moral if not exactly legal, to assent to its proposals of new law. In time of national danger it must be able to judge what measures are required and to take them, if necessary, without the King's approval. And, in extreme cases, it must be able, if it deems it necessary to do so, to supersede the King temporarily but completely. The Houses of Parliament, therefore, have only claimed rights that must needs belong to a representative body, and are implied in its very existence.

It might be said, as indeed Royalist writers did say, that if the King is bound to give assent to Bills, the Houses of Parliament can practically make what law they please. But that was not Parker's view. On his theory, the King could certainly

[1] *Observations*, p. 8. [2] Ibid., p. 41.

refuse assent to a Bill which deprived him of power which had been granted to him 'irrevocably'. Legislative power was, to him, limited by the nature of the original grant. Involved in such a view there is, of course, a ruinous ambiguity. How much was included in that imaginary original grant no one could know. According to Charles Herle it included the whole parliamentary system. How much more might it have included? But ambiguity does not of itself involve self-contradiction. I do not think that Parker intended to suggest that supreme power lay normally with the Houses of Parliament simply. Nor, in spite of his verbal inconsistencies, do I think that the nature of his thought logically bound him to do so.

Chapter III

THE SOVERAIGNE POWER OF PARLIAMENTS AND KINGDOMES

PRYNNE's *Soveraigne Power* appeared in separate parts at intervals between March and July 1643, but in its completed form not before August. It was a book of great reputation in its own day. It was spoken of, sometimes, as though it embodied the last word in political wisdom. But its reputation was, I think, only to a slight extent due to the real merit it possesses. It was due, partly to a parade of learning, partly to its insistence on law, and partly to the fidelity with which it kept close to Parliament's own declarations. It is permissible to suggest that it was also, to some extent, due to an extreme tediousness, which must have prevented all but a few from ever reading it thoroughly. The book is full of confusions and ambiguities, of repetition, digression and empty verbiage, and is decorated with a stiff-jointed, and labouring rhetoric, highly peculiar and characteristic.

It exhibits very extensive reading to singularly little purpose. Its text and margins bristle with 'authorities', which must have impressed the ignorant and served as a protection against readers. Prynne quotes or refers to a great number of authors of all ages and all opinions, celebrated or obscure: to Bracton and Matthew Paris, Fortescue, Holinshed, Lambarde and Sir Thomas Smith; to Bodin, Buchanan, Hotman, Salamonius, Junius Brutus, Grotius and the *Du Droit*; to Aristotle, Cicero, St. Augustin, and even Aquinas. With wonderful industry he ransacked all history for facts and precedents to prove this or that. It was not altogether his fault that his facts were often fictions, and his precedents almost always misunderstood. In the preface to Part I of his book Prynne spoke of the 'insufficiency and unsatisfactoriness of all late printed pleas for the Parliament's interest, through defect of punctual precedents and authorities to back their rational discourses'.[1] He certainly did his best to supply the defect.

[1] To the reader.

The book is an enormously elaborated piece of special pleading. Its reasoning, mainly based on false historical premisses, is therefore usually fallacious. But such power as it has is largely derived not from reasoning but from conviction. Often, indeed, it is hard to believe that Prynne was not deliberately dishonest in making use of his authorities. It seems like sheer impudent audacity to suggest, as he does, that Sir Thomas Smith, writing of Parliament in the *De Republica Anglorum*, was speaking of the Houses acting alone.[1] But Prynne, I think, was about as honest as a fanatic can be. He seems to have been blessed with that kind of faith which enables a man to believe what he knows is not true. Improbable as it may seem to be, it is probable that he believed every word that he said.

But the real merit of Prynne's book consists in the fact that, in spite of confusions and ambiguities, it is in the main fearlessly logical. Thickly overlaid with irrelevancies, obscured by rhetoric and surrounded, as it is, by a quickset hedge of authorities, the substance of it is yet logically derived from the Parliamentary declarations of 1642. What Prynne really gives his reader is a representation of the English constitution. It is presented in disorderly fashion, piecemeal, but the main outlines of it can be made out. It is true that nothing at all like this constitution of his had ever existed; but at least he tried to find it in the past, and imagined that he had found it. And, though it could not be found in the past, it could be found in the declarations of Parliament. In them was logically implied the constitution Prynne constructed. Though sometimes he seems to have been inclined to hedge and to take refuge in ambiguity yet, finally, he drew all the conclusions his assertions bound him to draw.

A good deal of the quasi-legal argumentation of the first two parts is more or less vitiated by confusion between a judicial decision on a question of law, and a legislative enactment. For that confusion there was not much excuse. Before 1643 Royalist writers were already pointing out the obvious distinction. Even on Prynne's own side it had been stated clearly enough by Oliver St. John in a speech on the proceedings against Strafford. Yet the confusion was common, and to say

[1] See part I, p. 39.

that it was without excuse would hardly be true. On the one hand, Acts of Parliament may be merely declaratory; on the other, mere judicial decisions may actually to some extent make law. If it be admitted that consideration of public policy may influence the judgement of a court of justice on a question of law, it must also be admitted that the judgement of the court may actually modify law, that is, alter it in some degree. But if this be so, then when we come to consider the action of what is conceived as the final and supreme court, where can the line be drawn? If that highest court lays down a rule of law on grounds of public policy, though in utter disregard of precedent or even statute, on what precise ground can it be said to have exceeded its powers? Actually, such a proceeding would be equivalent to a legislative enactment. But who can question the ruling? Not the King; for the King is not a judge in questions of law, and there is no appeal from his courts to him personally. In some such way as this, it seems, the supporters of Parliament must have argued.[1]

However this may be, it is clear that Prynne conceived of the Houses of Parliament as essentially a court. He actually argued that since 'Parliament' is a court of justice, and since the King cannot prorogue or dissolve such courts, therefore he has no right to prorogue or dissolve Parliament at his mere pleasure. He declared, too, that Parliament can function without the King's co-operation because the King is necessarily present in all his courts. He declared that, since it is treason to kill a judge in the exercise of his functions, 'much more' must it be treason to make war upon or slay any members of the Houses while 'doing their offices'. He even argued that, since a court of justice may set aside a royal grant as illegal, therefore the Highest Court may cancel any royal grant, commission or proclamation whatsoever at its discretion.

But it must be pointed out that such special pleading should not be taken too seriously. It is at least doubtful whether Prynne was really so confused as he chose to appear. Though he speaks of Acts of Parliaments as judgements, yet in later writings he distinguished clearly enough between legislative and judicial functions. In his *Soveraigne Power* he always speaks of the two Houses as forming the Highest Court. But in his

[1] I have not, however, found any such argument explicitly stated a nywhere.

Plea for the Lords, in 1648, he declared 'that the judgements in Parliament, even in case of commoners, appertain only to the King and Lords . . . not to the Commons'.[1]

In part I of his book Prynne set out to prove 'that the High Court of Parliament and whole kingdom which it represents, may in divers respects be truly and properly said to be the Highest Power of all others and above the King himself'.[2] At the outset, then, he seems to set the King apart from that High Court of Parliament which is above him. If he only meant that the King in Parliament was 'in some respects' above the King standing alone, he was trying to prove what hardly any one would have denied. But his language about the composition of the High Court of Parliament is actually confused. In several passages of his book he fully admitted that the King was a part of it. The King, he says, is 'the chief and principal' member of Parliament, though also the least part of it; 'the Lords and Commons being the greatest and most considerable part, as representing the entire body of the kingdom'.[3] He never says that the Houses alone constitute the High Court of Parliament; yet he constantly speaks of them as constituting the 'Highest Court', and he generally uses the word Parliament to signify the two Houses simply. What he actually proved, if he proved anything, was that the King had little more than a formal place in the constitution, and that the Houses can at any time supersede and take over even his executive authority.

To begin with, in relation to the Houses and to the making of law, the King's position, according to Prynne, is but formal and fictitious. He summons Parliament; but Prynne insists that he is bound by law to do so every year or 'as often as need is'. In this connexion he refers his readers to the statutes of King Alfred. Once Parliament is sitting the King has no right to dissolve it till all grievances are redressed to its satisfaction, because to do so would be a denial of justice and therefore a breach of Magna Carta. Also he has no right to dissolve a court of justice. Nor has he any sort of right to refuse his assent to Bills of public importance. Prynne perceived the obvious practical importance of this question of the King's

[1] *A Plea for the Lords*, March 1648, p. 38.
[2] *Soveraigne Power*, 1643, pt. I, p. 33. [3] Ibid., p. 41.

'negative voice', and he argued it both in part I and part II of his book, at considerable length.

He laboured to refute the Royalist theory that, though law could not be made except in Parliament, yet it was made, not by the Houses, but simply by the King's assent to their petitions. 'The chief power of enacting and making laws', Prynne declared, 'is only in the people, Commons and Peers. . . . All public acts are the whole kingdom's laws . . . therefore the whole kingdom, represented in and by both Houses, not the King, knowing much better what is good for themselves than the King alone, it is just and reasonable that they and not the King should be the principal law-makers.'[1] But it is not only just and reasonable, it is, he declared, actually the law that, if the Bills 'be public and necessary for the common good',[2] the King is bound to give his assent.

In part II he explained his meaning clearly and fully. He admits that there is a class of Bills upon which the King has a discretionary veto. Such are 'private' Bills 'of mere grace and favour', Bills of indemnity or naturalization, or Bills conferring 'new franchises' on persons or corporations. In relation to all these he concedes that the King has 'an absolute negative voice'.[3] But he has no such power in relation to 'bills of common right', which concern the whole kingdom and every one in it. To such Bills, 'which the whole State in Parliament shall hold expedient or necessary to be passed', the King 'is bound in point of office, duty, oath, law, justice, conscience, to give his royal assent'.[4] The King is bound by Magna Carta to deny justice to no one: refusal to assent to a Bill for the general advantage would be a denial of justice.[5] The King cannot cancel a judgement of the High Courts: *a fortiori* he cannot overrule the judgements of his Highest Court.[6] The various forms of coronation oath as well as the formula '*Le Roy s'avisera*' imply, Prynne argued, that it is the King's duty to pass all 'public' Bills insisted upon by the Houses. 'The royal assent', he concluded, 'to just necessary public bills, is in truth but a formal ceremony.'[7] Of their justice and necessity, it is implied, the Houses are the sole judges. But this, which is what he had to prove, is simply assumed.

[1] *Soveraigne Power*, I, p. 48. [2] Ibid., p. 51. [3] Ibid., II, p. 65.
[4] Ibid., II, p. 66. [5] Ibid., II, p. 66. [6] Ibid., p. 65. [7] Ibid., p. 75.

Like most Parliamentarian writers, Prynne seems to have been reluctant to say outright that the powers he claimed for 'Parliament' were derived from its representative character. To have said that, would have implied that there somehow existed some kind of ultimate sovereignty in the body of the people, including the multitude of the profane. Apart, too, from the troublesome inferences that might be drawn from such a proposition, it would have put him into a difficulty with regard to the House of Lords. Prynne was careful to make it clear that his 'Parliament' consisted always of the two Houses. He never suggested that the power he claimed for it properly belonged to the Commons simply. He was well aware of the practical importance of retaining the support of the 'honourable and faithful' peers who still remained at Westminster. Prynne might have escaped ambiguity by frankly admitting, as at least one Parliamentarian writer had done, that Parliament represented little more than 'the nobility and gentry'.[1] He could have found warrant in the *Vindiciae* for an assertion of a natural right to govern in those classes. But no lawyer was likely to make so compromising an admission. If that were so, what became of the fiction that Parliament spoke the mind of the whole nation and that every Englishman was there present?

Yet there is no doubt about the impression that Prynne's book must have made on his readers and little, I think, about the impression it was intended to make. That the Houses derived their powers from their representative character his language on the whole very consistently implies. The very title of his book does indeed imply as much. What did he mean by the sovereign power of 'Parliaments and Kingdoms'? He kept constantly to the combination of the two. His Appendix, he tells us, was designed to prove that in all the kingdoms and empires of the world, from that of Ancient Egypt onwards, sovereign power had resided 'not in the Emperors and Kings themselves but in their Kingdoms, Senates, Parliaments, People'. Do all these words signify the same thing? If not, it is clear that the legal power of Parliaments and Senates cannot be of the same nature as the sovereign power of Kingdoms and peoples. Yet we may safely suppose that Prynne

[1] *Truth and Peace honestly pleaded*, November 1642.

was not talking sheer meaningless nonsense. Parliament, to him, expressed the mind of the kingdom, and so the sovereignty of the one was actually the sovereignty of the other.

The King himself, Prynne asserted, was 'elected at first by the free general votes' of the people. 'Therefore, doubtless, the people, who thus created and elected their kings at first, did likewise constitute and elect all public Councillors, Officers, Judges, Ministers of the State.' The right to appoint such subordinate officers 'was never yet irrevocably or totally transferred to the King . . . and therefore, when they see just cause, they may make use of this their primitive inherent right of election, without any real encroachment on the King's prerogative'.[1] All high officers of State are 'more the kingdom's than the King's'.[2] But the right of 'the people' to appoint them, never 'totally transferred' to the King has, it appears, been totally transferred to the Houses of Parliament. The King indeed by law normally makes the appointments, but if he exercises his powers improperly, 'no doubt the Parliament may justly regulate or resume that trust so far into their own hands as to recommend faithful persons,'[3] and the King is then bound to accept its 'recommendations'.

Similarly, Prynne argued, the Houses may, when in the public interest they think fit to do so, take over control of armed forces or, indeed, may assume to themselves any of the powers normally belonging to the King. For all the King's prerogatives are derived only 'from the voluntary consent and grant of his people in the Parliament';[4] and what was so granted may, on occasion, be resumed.

In spite of hesitations and consequent lapses into confusion or ambiguity, Prynne stated broadly and clearly, the conclusions his whole argument involved. 'The Parliament being the Highest Power, the King himself ought to submit thereto, and to be ruled and advised thereby.'[5] It is the Royalists who are the rebels. This war against them is 'authorized and commanded by the express votes and ordinances of both Houses of Parliament, which I have undeniably manifested to be the supremest lawful power and sovereignest authority in the realm, paramount the King himself, who is but the

[1] *Soveraigne Power*, II, p. 41.
[2] Ibid., p. 44. He refers in this connexion to the *Vindiciae*.
[3] Ibid., II, p. 43. [4] Ibid., I, p. 35. [5] Ibid., I, p. 105.

Parliament's and kingdom's public royal servant for their good'. He claims for 'Parliament' a legislative power absolutely unlimited or limited only by the law of God. 'The Parliament is the absolute sovereign power within the realm, not subject to or obliged by the letter or intendment of any laws, being in truth the sole law-maker and having an absolute authority over the laws themselves, yea over Magna Carta . . . to repeal, alter, determine and suspend them when there is cause.'[1] So also 'it hath always constantly enjoyed an absolute right and power . . . of granting and imposing on the subjects whatsoever taxes . . . confiscations of goods or restraint of liberty, by temporary or perpetual imprisonment, it thought meet and necessary'.[2] Such passages were indeed probably meant to refer to the full High Court, including the King. But as the King's assent to Bills regarded by the Houses as of public and general importance was nothing but 'a formal ceremony', Prynne was really claiming full legislative power for the Houses simply. As the Royalist, Griffith Williams, declared, he 'divesteth the King of all his sovereignty and maketh our government aristocratical'.

In the third part of his book Prynne adduced in support of Parliament's position a number of general considerations. These perhaps should logically have been put first of all; but as he made no attempt to present any sort of complete and coherent theory it mattered little where this miscellany was placed. In this portion of his work he was mainly concerned with defending against the contentions of Royalist writers the claim of a right of resistance to the King, and with a refutation of what he chose to represent as the theory of the Royalist party concerning the King's divine right. As against the feeblest of Royalist apologists his argument was effective and even crushing. But the main contentions of his most serious opponents were neither answered nor, apparently, understood.

Quite early in his book Prynne had solemnly declared 'that kingdoms, subjects and Parliaments were not created by God for the wills, pleasures, profits or benefits of kings, who by birth and nature differ not at all from the meanest of their subjects'.[3] Nor is it true that 'the power of kings is not a human but a divine power',[4] and therefore never to be resisted. 'Power and

[1] *Soveraigne Power*, IV, p. 15. [2] Ibid. [3] Ibid., I, p. 45. [4] Ibid., III, p. 115.

government in general are God's own institution . . . He hath for the good of mankind appointed that there should be some form of government or other among men. . . . But in regard of commonweals, or nations, he hath left it arbitrary and indefinite, leaving every nation and country free liberty to elect such a public politique form of government as themselves should judge most expedient . . . and that mutable as they should see just occasion.'[1] Any particular government may be ordained of God; but no particular form of government can claim to be so. All governments, in fact, monarchies, aristocracies and democracies, alike and in the same sense, rule by divine right.

Under all normal circumstances, that is, obedience to the lawfully established government is a duty owed to God. 'As long and so far forth as Kings justly and uprightly do execute their just royal power', they must be obeyed 'as God's own ministers'.[2] Normally the King represents the general interest, and rebellion against him is wicked, because any attack on his position is an attack on the whole kingdom. Against such an attack every subject is bound to defend him. Upon all alike there rests an obligation to defend the realm, derived from 'the original compact and mutual stipulation of every member of any republic, state or society of men . . . made at their first association'.[3] Just as the subject is bound to defend the kingdom against unjust rebellion or foreign enemies, so, equally, is he bound to defend it against attack by the King himself. No Englishman, indeed, can rightfully take arms against the King 'without the general assent and authority of the whole State and Kingdom, or of both Houses of Parliament'.[4] But a King who 'invades' his subjects' rights and liberties, raises unlawful taxes and claims an arbitrary power, acts in contradiction of the purposes for which he exists, and becomes a tyrant and a public enemy. If he raises armed forces and endeavours by robbing and murdering his subjects to compel their submission, it is merely absurd to say that he may not be resisted.

'That resistance is forbidden which is contrary to subjection.' He meant presumably such a resistance as involves a denial of

[1] *Soveraigne Power*, III, pp. 115–6. Prynne ignores the inconvenient fact that except for the last clause, Ferne said practically the same thing.
[2] Ibid., III, p. 6. [3] Ibid., III, p. 13. [4] Ibid., p. 6.

the reality of subjection. But he ignored the Royalist contention that any claim to a right of resistance involved that denial. It is not merely active or forcible resistance, he continued, that is forbidden by God. Every form of disobedience to the Higher Power is equally and in the same sense forbidden. 'Opposition by way of force is only a higher degree of resistance.' Even an unwilling yielding to force will not satisfy God. But, that being so, it is absurd to say that there is no just cause of resistance in any case. All agree that commands directly contrary to God's law must be disobeyed. It is clear therefore that when God commands obedience to the Higher Power, He cannot possibly mean that the command applies in every case conceivable. If in certain cases we are bound to disobey, that of itself implies that we are authorized, if not bound, to resist by force in some cases. Such action as Christians may, or are bound to, resist 'with all their souls, minds, tongues, they justly may and must likewise resist with all their corporal might'.[1] To say that tyranny is a punishment inflicted by God, and therefore must not be resisted is 'absurd and idle'. You might as well say that you ought not to fight against disease or resist a murderer.[2]

With the Royalist argument from expediency Prynne dealt mainly by simple contradiction. He admits that resistance to the King may involve civil war, but declares that a doctrine of non-resistance is 'more pernicious and destructive to the realm than the contrary'. The recognition of a limited right of resistance tends of itself to prevent tyranny. In any case, 'resistance only in cases of public necessity, though accompanied with civil war, serves always to prevent far greater mischiefs than war itself can produce, it being . . . the readiest means to preserve endangered, to regain or settle lost liberties, laws, religion'.[3] All monarchies, he concluded, like all other governments, are humanly established and alterable. 'Hereditary kingdoms, being but offices of public trust for the people's good and safety', may be altered or abolished by 'joint assents'.[4] It is doubtful what 'joint assent' means. But he ventured a little farther. If inferior magistrates or bishops by divine institution may, on occasion, be deprived, condemned and

[1] *Soveraigne Power*, III, p. 123.
[2] Ibid., p. 133.
[3] Ibid., p. 134.
[4] Ibid., p. 122.

executed, 'why not Kings as well as they?'[1] But I do not think that Prynne meant to assert that there actually existed anywhere a right to try and execute the King. He was merely offering a conundrum to the believers in divine commission.

The book ends, in orthodox fashion, with denunciation. Parliament, in Prynne's view, was defending itself against a papistical and malignant crew with whom the King had unhappily joined. All through the book there runs a suggestion that the Royalist party consists mainly on the one hand of actual Papists, on the other of 'malignants', atheistical and profligate wretches who hate all religion and order and would destroy both. Faithfully, Prynne repeated all the official slanders. But he recognized that the Papists and malignants had been joined, not only by the King, but by a certain number of Protestants. It seems even that he had begun to suspect that the number of these was not inconsiderable. In an amazing passage, at once horrible and ludicrous, towards the close of his Appendix, he expressed the feelings the thought of them excited in him.

'How monstrously, unnaturally, unchristianly and detestably impious, treacherous, perfidious, all those English, Irish, and Scottish Protestants proclaim themselves to the present and future ages, who now traitorously join their forces with the malignant Popish party. . . . Certainly such unnatural monsters, such traitorous Judases, such execrable, infamous apostates as these, can expect no other real remuneration of this their treachery and perfidiousness, but the ruin of their credits, the detestation of their persons, memories, the confiscation of their estates, the extirpation of their families, the execrations of all good men, the severest judgements of God and utter confusion with horrors of conscience tormenting them constantly, day and night, while they continue languishing under all these miseries here, and the sharpest torments, the largest dangers, the hottest flames in Hell for ever hereafter. . . .[2] O where shall all these ungodly sinners, rebels and traitors appear, who now everywhere murder, plunder, persecute, extirpate God's dearest saints and not only refuse to own but even desert, betray the cause of God and their country? . . . Certainly if judgement shall begin at the house of God

[1] *Soveraigne Power*, p. 121. [2] Ibid., Appendix, p. 216.

itself . . . and if the righteous who defend the cause of God and the kingdom shall scarcely be saved, what these men's dreadful end and judgement at last shall be, transcends my thoughts to conceive, my expressions to relate; all I can say is this, it will be so superlatively miserable and grievous that an eternity of incomprehensible torments will only be able to demonstrate the infinity and execrableness of their sin.'[1]

Can the man have been sincere in this frantic utterance? It seems barely possible. How did he think of those prominent Royalists of whom he knew at least something? Did he think of Hyde and Chillingworth as malignant atheists, of Ferne as a hypocrite, of Spelman as a rascally courtier, of Hammond as a Jesuit in disguise, of Falkland, perhaps, as simply a fool? He knew something of all these men or of their writings. Difficult as the supposition is, I think Prynne meant what he said. But the impression such diatribes tend to produce is generally out of all proportion to their evidential significance. There is no doubt that hatred and bitterness increased very seriously on both sides during the war. But Prynne's maledictions can hardly be taken as illustrating that fact: in him hatred and bitterness were ready made. It would be a mistake to suppose that the intensity of feeling he exhibits was common among the supporters of Parliament in 1643. Yet it certainly then existed; and it tended to spread. The passages quoted link Prynne, to some extent, with the group of fanatical enthusiasts whose chief spokesmen in 1643 were John Goodwin and the author of *Powers to be Resisted.* But Prynne was not of that group. He thought in terms of law and of what he imagined to be history; and his references to the peril in which religion stood seem conventional and are certainly unconvincing.

On the other hand, though his malignant virulence was his own, Prynne expressed just that view of the Royalists which Parliament had done its best to spread. In this as in other respects he was an orthodox Parliamentarian. He was, of course, vastly more book-learned than the mass of his party; and his historical argumentation probably bewildered even while it comforted. But, in spite of all exaggerations, excrescences and extravagancies, his book was substantially orthodox

[1] *Soveraigne Power*, Appendix, p. 217.

and typical. No one who read it carefully could doubt what the aim was that was logically implied in Parliament's official declarations. Almost everything he says concerning the rights of the Houses and the absence of rights in the King, occurs again and again in the pamphlets of these years. Like him, the mass of Parliament's defenders thought in terms of law, and maintained that the Houses were only claiming what was legally theirs. Like him, they preferred to rest their case on precedent and ancient statute, rather than on any theory of the State or even of representation. Like him, they made far more of the constitutional than of any sort of religious issue. The assertions of most of them, like his, amount to a demand that the King shall become little if anything more than a figurehead and a symbol. And like him, they never said so quite explicitly.

Chapter IV

A TREATISE OF MONARCHY

PHILIP HUNTON, like Herle an ordained minister of the Church, was born at Andover in 1604, had been schoolmaster at Avebury, a minister at Devizes and became vicar of Westbury in Wilts. His career had so far been undistinguished. Later he rose to some prominence, and in 1657 was appointed Provost of Cromwell's University at Durham.

His *Treatise of Monarchy*, published in May 1643, is remarkable in more than one way. It is written with a cool detachment and with very unusual fairness to opponents. It is an essay, quite curiously colourless and 'academic', on the different kinds of monarchy and on the right of resistance to illegal action. Most of Hunton's propositions are abstract, and only in the second part of the treatise did he deal directly with the constitution of England. Though his argument may fairly be said to be somewhat superficial, his treatise is the most logically coherent of the attempts made to base Parliament's case on some sort of theory of the State.

Neither Hunton's moderation nor his actual conclusions were suited to the heated atmosphere of the moment. Little attention seems to have been paid to him on his own side of the controversy. Ferne, however, criticized his treatise and so, later, did that great Royalist critic of Parliamentarian theories, Sir Robert Filmer. In reply to Ferne, Hunton published in 1644 a *Vindication*, which, while stating some of his points more fully than before, really added nothing to what he had said already. After that restatement of his views, he seems to have taken no further part in the debate. A tract of 1642,[1] which has been ascribed to him, was certainly not his. It expresses a view quite different from that of the *Treatise of Monarchy*.

Up to a certain point Hunton agreed with Parker and Prynne and all Parliament's chief advocates. God has ordained that man, for his own good, shall live under authority and commands obedience to all lawful orders of the magistrate.

[1] *The unlimited Prerogative of Kings subverted*, November 1642.

But man is free to choose the form of government that suits him: men have 'a liberty and power by common consent to resign up themselves and theirs to one supreme'.[1] All actual magistrates obtain and hold authority 'by the tacit and virtual, or else express and formal, consent of that society they govern'.[2] Forms of government, therefore, vary with the dispositions of the people governed. 'Their common consent and contract is sufficient to set up such a power which is endowed with a sufficiency of command.'[3] However authority is actually established, the command to obey holds good always.

Neither God nor man could have established government for any other purpose than public welfare. It is by reference to this that all the acts of magistracy must be measured and judged. This principle, Hunton pointed out, implies another, which is secondary. Since authority must be maintained, and since if it is to be maintained it must be respected, 'the preservation of the power and honour of the governors' is necessary in the interest of all.

The ground thus cleared a little, Hunton proceeded to discuss the various forms of monarchy, 'the most usual form of government in the world'. He considered first what he calls Absolute Monarchy, using that term exactly as it is used now. Here he parted company with Parker and all the other Parliamentarian writers who touched on the matter. Absolute Monarchy, he says, is that in which the power of the King has no limits, except those imposed by the nature of things. Where this has been established by consent 'this is a lawful government'. To this kind of monarch there can be no rightful active resistance in any but an extreme case. If the subjects of such a King are commanded to break the law of God, disobedience is a duty but must only be passive. If, however, the monarch behaves like a madman and sets out to ruin and destroy his subjects, they may defend themselves by force. Barclay had said the same. In this case forcible resistance is allowable, Hunton says, because it was only to a will assumed to be rational that men subjected themselves. Quite consistently he added that if there is any appearance of reasonableness about the Monarch's action, there must be no resistance. All this, for England, was

[1] *A Vindication of the Treatise of Monarchy*, March 1644, p. 24.
[2] *A Treatise of Monarchy*, May 1643. [3] *A Vindication*, p. 24.

entirely irrelevant; but Hunton was resolved to make his exposition complete and leave no gaps.

This is followed by discussion of the nature of Limited Monarchy, of which the 'Mixed Monarchy' of England is a particular species. In this form, which can only be established by 'the consent and fundamental contract of a nation of men', the limits of the King's power are not determined by himself. His power is limited, either by the content of the original constitution or contract which established the monarchy, or by agreements to which the King was a party. If a conqueror at first rules arbitrarily and comes later to terms with his subjects, it is no mere act of grace, but the taking of a new title to power 'equivalent to that by original constitution'.

Within the limits assigned absolute obedience is due to such a King, so far as he does not overstep those limits. 'I say so far, but I do not say no further.' Though the subject is not absolutely bound to obey illegal orders, it may be well that he should do so to avoid scandal and the discrediting of public authority. He must not, however, so act that his act can be 'made a leading case and so bring on a prescription against public liberty'.

In a limited monarchy not only passive resistance, but also resistance active and forcible may be rightful and necessary. The King himself indeed is always personally inviolable, nor can there be any legal power to depose him, however much he exceeds his limits. All depends on 'the original contract and fundamental constitution'. But if this gave to any definite body a legal right to depose the King, there would be no monarchy: the body holding such power would be sovereign. As for the people at large it must either give or not give; it cannot cancel its grant. If it could do so there would be no contract; for that is not a contract which one of the parties can repudiate when it pleases.

The King himself, Hunton seems to have thought, can never rightfully be assaulted or forcibly restrained. But there are cases in which his agents, officials or soldiers, may, and should, be forcibly resisted. They have no right to obey or to enforce his unlawful commands. Even in a limited monarchy, if the King's transgression does not 'strike at the very being of that government, it ought to be borne . . . rather than to endanger

the being of the State'. But if his transgression be such as to tend to the destruction of the 'frame of the government and public liberty', then 'prevention by resistance ought to be'.

Who is to judge when this is the case? Hunton recognized, here, a serious difficulty. In no sort of monarchy, he says, can there exist any definite body or court legally empowered to decide whether the King has so far exceeded his rights as to justify forcible resistance to the agents of his will. 'In a limited monarchy it is impossible to constitute a judge.' Any such judge would be the sovereign, and the constitution would not be a monarchy. Appeal can be made only '*ad conscientiam generis humani*' and, in particular, to the consciences of the men of the community concerned. 'Then the fundamental laws of that monarchy must judge and pronounce the sentence in every man's conscience; and every man must follow the evidence of truth in his own soul.' When such a crisis arises the people 'are in state as if they had no government'[1] and every one must decide for himself what it is right to do. A right of individual judgement in such a case must be held to be tacitly implied in all agreements. 'Who can deny unto man such a liberty to conceive of right according to the light he hath from the fundamentals of a State?'[2]

There is no doubt, Hunton declared, that the monarchy of England is not an absolute monarchy. It is a limited monarchy of the kind that is called mixed. He quoted the recent royal proclamations to show that the King himself admitted that this was so. The English King can make no law without the concurrence of the Houses of Parliament. 'By the fundamentals of the kingdom', the Houses have a share in sovereignty. It is, indeed, only because the King holds all executive power and can, at his pleasure, summon or dismiss the Houses, that our constitution can be called a monarchy. It is the best of all possible constitutions. 'I conceive it unparalleled for exactness of true policy in the whole world.'[3] In such a constitution there can never, in any case, be a right of resistance to King and Houses acting together. The people, apart from the Houses, have no right to act in any way. In England the King in Parliament is equivalent to an absolute monarch.

[1] *A Treatise of Monarchy.* [2] *A Vindication*, p. 30. [3] *A Treatise of Monarchy.*

On the other hand, it is the main intention in such arrangements that the King and the Houses should act as checks upon each other. 'If the Monarch invade the power of the other two', or try in any way to bring about the ruin of the constitution, it becomes the duty of the Houses to take action against him. 'That is the very end and fundamental aim in constituting all mixed policies.'[1] But in every kind of limited monarchy there is the same difficulty and the same weakness. 'There can be no constituted, legal authoritative judge of the fundamental controversies arising betwixt the three Estates. If such do arise, it is the fatal disease of these governments for which no salve can be prescribed.'[2] If the Houses of Parliament were constituted as judges, they would be sovereign and the King their servant. There would be no monarchy. 'The appeal must be to the community as if there were no government, and as every man is convinced in conscience he is bound to give assistance',[3] to one side or to the other.

In such a time of crisis as the present, Hunton declared, that appeal must be made. If there be no right of resistance in any case, the limited monarch necessarily becomes 'absolute'. A right to mere passive resistance or a right to refuse money are useless and fictitious, if they can in no case be maintained by force. 'The denial of this power of resistance . . . overthrows all government but that which is absolute.' It is true that such resistance may for a time destroy order; it is true also that civil war, whoever be the victor, might lead to the destruction of the constitution. But it will certainly be destroyed if there is no resistance. Strictly constitutional resistance cannot, of itself, ruin the constitution or even change it. Nor is it true that resistance to the King's unlawful action necessarily leads to civil war. In any case, 'a temporary civil war is to be chosen rather than a perpetual loss of liberty'.

'If any wonder', Hunton concluded, 'I should justify a power in the Houses to resist agents of destructive commands . . . and yet not allow them power of judging when those commands are destructive, I answer, I do not simply deny them power of judging . . . but I deny them to be a legal court ordained to judge of this case authoritatively. . . . 'Tis the evidence, not the power of their votes, must bind our reason and practice in

[1] *A Treatise of Monarchy.* [2] Ibid. [3] *A Vindication.*

this case. We ought to conceive their votes the discoveries made by the best eyes of the kingdom. . . . But our consciences must have evidence of truth to guide them, and not the sole authority of votes.'[1]

According to Hunton, the Houses had taken arms because they judged it necessary to do so to save the constitution. That, in his view, was their only, but sufficient, justification. He declared with emphasis that dislike of the religion by law established could not in any case justify such action. If men were held entitled to rebel against the decisions of the civil sovereign on the ground of their own particular religious opinions, the door, he argued, would be open to every kind of disorder. On such grounds not only Papists and heretics but ordinary criminals could claim a right of rebellion.

Hunton seems to have started with an absolute assumption that England must be called a monarchy in the strictest sense. There could be, he argued, no legal power to determine whether armed resistance to the King was justified, because, if such power existed anywhere, England would not be a 'monarchy'. The Houses of Parliament, therefore, could have no positive authority to decide the question. Every man must decide for himself what to do, according to his conscience and his conception of what was fundamental. Turning as it does on the meaning of the word 'monarchy', the argument looks like a piece of mere verbal logic. Why should not any State which has a King be called a monarchy?

It might, even, be said that if Hunton's argument proved anything it proved that the Royalists were in the right. The extent to which his view coincided with theirs is remarkable. Between him and Ferne there was no really serious disagreement, except on the question of a right to forcible resistance. The Royalists were actually upholding that mixed monarchy of which Hunton conceived. What was there, in view of the King's own declarations in 1642, to justify his assumption that Parliament was defending it against attack?

How, in any case, asked Filmer, can any law, fundamental or not, itself pronounce a sentence, even in a court of conscience? Hunton, he declared, was merely saying that every man has a right to rebel when he thinks he ought to do so. 'I also', says

[1] *A Treatise of Monarchy.*

Sir Robert, 'appeal to the conscience of all mankind, whether the end of this be not utter confusion and anarchy.'[1]

Filmer's contemptuous criticism was justified to a point by Hunton's own words. Like the other objections to his argument that have been here stated, it was, nevertheless, quite superficial. What Hunton was really, if confusedly, saying was that, when the foundations of authority are questioned, when a nation is profoundly divided as to how or by whom it shall be governed, no tribunal or constituted authority can possibly be competent to decide the question. It is then, as he says, 'as if there were no government'. When a nation is so deeply divided that civil war breaks out, when men 'disagree unto death', it is merely absurd to claim for either side a right to decide what any one ought to do. It is not, then, and it cannot be, a question of law. In such a tragic situation we must all decide for ourselves, for there is no one who can judge for us. All that we can then be sure of is, that those who deny our right to choose our side according to our own judgement and conscience, are certainly in the wrong. Hunton's conclusion was impotent, in that it was of no practical service to either side. But in estimating the value of his work, that is a fact of no importance. Both sides were claiming that it was the duty of every man to join with them. It was well that some one should tell them it was not so. In spite of the superficiality of much of his reasoning, it may fairly be said that Hunton was right in his conclusion.

[1] *The Anarchy of a Limited and Mixed Monarchy*, 1648, p. 21.

Chapter V

PARLIAMENTARIAN WRITINGS IN GENERAL

§1. SOME GENERALIZATIONS

A LARGE amount of highly varied material has now to be considered. Much of it indeed is slight, and there is much that can only be reckoned trivial. But confused and feeble as are very many of the writings on the Parliamentarian side, they are collectively important. They serve as an indication of the character of ordinary Parliamentarian sentiment and opinion. They express a variety of points of view and exhibit so much mental confusion, that it is often impossible to be sure what a writer meant. In these conditions any sort of generalization is extremely difficult, and likely to be either false or misleading.

A considerable number of writers concerned themselves very little or not at all with theories or arguments about the constitution of government. These may at once be briefly characterized and set aside. They took their cue from the pleas of justification issued by Parliament in August and October 1642. Some of them reproduce actual phrases from those declarations. We are repeatedly told that the plotting of Papists, and especially of Jesuits, is the root of all the trouble. Some writers have nothing else to say. Others dwelt chiefly on the Papistry, idolatry, atheism, profligacy and general godlessness of the Royalists and on their malignant and abominable projects. They were described as 'papists and atheists' and as 'papists and parasites'. The King, it was asserted, is in the hands of malignant wretches bent upon his ruin.[1] Parliament is trying to rescue him. One writer declares that on our side are 'all godly, conscientious people'. On the other are Papists, superstitious and scandalous ministers, blaspheming wretches of every rank, traitors and Irish rebels, and many of the ignorant and foolish. He naïvely adds that it is really remarkable that the kingdom should be thus divided between angels and devils.[2]

[1] *A Vindication of Parliament*, October 1642.
[2] *A New Plea for the Parliament*, January 1643, B.M. E. 244 (38).

Such writings as these have a certain significance only because there are a good many of them. The one last cited appears to have been written from some religious point of view. But in most of them there is no definite sign of that being the case.

The grotesque illusion that the Royalist party consisted chiefly of Papists and atheists and profligate ruffians, combined to destroy Parliamentary government and Protestantism and even religion itself, does not, however, appear only in the writings of obscure persons of little or no influence. Stephen Marshall was one of the most ardent and influential of Parliamentarian preachers. Who could have believed, he asked in 1643, that so many members of Parliament would betray their trust, 'so many unworthy gentlemen fight to destroy a Parliament'? He expressed astonishment at 'so many of the Protestant profession joining with an army of Papists'. It has become clear, he declared, that the intention of the Royalists is to overthrow alike Parliament, law, liberty and religion.[1] Prynne, of course, abounded in the same sense, and with an unequalled assurance and violence of language. But many more sober writers seem to have been under the impression that the Royalists intended to establish a despotism.

Certain other preliminary generalizations may here be ventured on. A large majority of the writers on behalf of Parliament make little or no mention of religion or religious reformation. References to it are indeed numerous, but they are usually brief and perfunctory. In view of the stress that had been laid by the Houses on their intention of reforming religion, the fact is striking and seems significant. Only a very few writers declare that arms were taken mainly for the sake of religion. One, on the other hand, went so far as to argue that the religious difficulty was mainly imaginary. Most of the King's supporters are, he asserted, 'Protestant in essentials', and there is really little difference between their religious views and those of the House of Commons. 'There is not one man of both Houses of Parliament that is violent against all set forms of prayer, or that form which is now in use, or that desires any alteration of doctrine in essentials.' Practically every one is ready to accept the Creeds, and the Thirty-nine Articles and

[1] *A Copy of a Letter*, 1643.

the Liturgy as they stand. An agreed settlement, he implied, should easily be reached.[1]

It may further be said that the majority of Parliamentarian writers appeal to something they call law. The word, it is true, was used in different senses and often very ambiguously. 'Fundamental' law is frequently referred to without any attempt to explain what is meant. To some writers 'law' seems to have been a law of reason or a law of nature, which they found in themselves if nowhere else. 'A law which is unreasonable', declares one writer, 'doth not oblige men to obedience . . . that is no law if it be not warranted by the law of reason.'[2] This seems rather strange doctrine as coming from one who signs himself 'of Lincoln's Inn'. But it is clear that most of them were as anxious as the Houses themselves to rest their case on some kind of law and on that only. Relatively few of Parliament's apologists appeal to any theory of the nature of the State or of authority within it, or to any historical process or to any sort of sovereignty of the people. Many, indeed, declare, as though it were a recent discovery, that the community does not exist for the sake of its King. They seem unaware of the fact that no one said it did. It is significant that very many Parliamentarian writers show little or no knowledge of what was being said on the Royalist side of the controversy.

§2. PARLIAMENTARIAN ARGUMENT AND ASSERTION

It might be said that what characterizes the apologies for Parliament, viewed as a whole, is nothing else than mere confusion and incoherency. It might, despairingly, be maintained that it is futile to attempt any sort of generalized summary of the views of Parliament's supporters. But, practically, the case is not so bad as that. We have already, in the previous section, as it were set aside the numerous writings of those who had little or nothing relevant to say. They need no further consideration. We have dealt, also, with those who say too much. An attempt may now be made to set forth the content of what remains.

[1] *The Contra Replicant*, January 1643. B.M. E. 87 (5). Thomason attributed this to Parker. It may be his, but I incline to think not.

[2] *An Argument or Debate in Law: Of the Great Question concerning the Militia*, by J. Marsh, September 1642.

Up to a certain point agreement seems to have been general. It was constantly asserted that God favours no particular form of government and that man is quite free to choose whatever form he desires. If many writers gave no thought to these propositions none, on Parliament's side, denied them. Equally often, and without contradiction, it was declared that mere force or conquest can create no right. Political authority, it was agreed, consists essentially in a right to command obedience as a duty. Jeremiah Burroughs distinguished clearly, as Parker had failed to do, between mere actual power and real authority, declaring that power resting on mere force lacks authority and may always be resisted.[1] The distinction, it appears, would have been generally held to be valid. Authority, says William Bridge, 'abstractively considered', is from God, not from the people; but the form in which it is exercised and the conditions of its exercise are established by the community itself.[2] 'God was pleased', he wrote, 'to appoint magistracy itself and left the children of men free to set up that way and form of government which might best correspond with their condition.'[3] This view seems to have been generally taken.

A good many writers followed Parker in asserting that governmental authority is ultimately derived from the people itself and is established by a common consent, under a 'paction', formal or implied. They formed but a small proportion of the whole body but included Herle and Burroughs, and indeed most of the writers who show much intelligence. 'In all forms of government', declared the author of the *Contra Replicant*, 'the people passes, by way of trust, all that power which it retains not; and the difference of forms is only in degree, and the degrees are almost as various as the several states of the world. . . . And in each state it varies with time.'[4] 'He that is free, as all men are by nature,' one tract asserted, 'becomes not subject *de jure*, till his consent, agreement, and election makes him so, and to no more than his consent reaches,

[1] *The Glorious Name of God*, Postscript, 1643, p. 125. The postscript was an answer to Ferne.

[2] *The Wounded Conscience cured*, February 1643, p. 52. An answer to Ferne's *Resolving of Conscience*.

[3] *The Truth of the Times Vindicated*, July 1643, ch. I. An answer to Ferne's *Conscience Satisfied*.

[4] *The Contra Replicant*, January 1643, p. 7.

explicitly or implicitly.'[1] On this important theoretical point, Herle and Burroughs were in substantial agreement with Parker. It is pointless, Burroughs declared, to say that history does not prove that monarchy was established by agreement. Unless by direct divine interference it could not possibly have originated in any other way. It cannot have originated in force, for no right to command can be so established. 'You may give it what name you will, it is a mere certainty that, even here, Kings were at first either by choice or by that which in effect is all one.'[2] 'No free subject', he says in another place, 'is bound to any law of man. . . . but such as, some way or other, he giveth his own consent unto.'[3] Such law is only made in Parliament.

Herle, though he agreed essentially with Parker, seems to have conceived of the original paction somewhat differently. England, he says, 'is a co-ordinative and mixed monarchy', in which supreme power lies with King, Lords, and Commons in Parliament.[4] Almost all Parliamentarian writers would have said that, and so did Ferne. But Herle seems to have believed that the existing constitution of government in England was originally arranged and established by the actual Houses of Parliament. He speaks of them as 'the same with that which first contrived the government'.[5] The purpose of these early arrangements was, he says, to secure the direction of government to its proper ends. 'So that the government, by law its rule, unto safety its end, is ordinarily entrusted to the King, wherein if he fail and refuse the rule, law, to its end, safety, his co-ordinates in this mixture of the supreme power must, according to their trusts, supply.' He declared this to be part of the fundamental and original law of the constitution. 'But you'll say there is no written or fundamental law for this. I answer, if it be written it is superstructive and not fundamental. Written laws that were not laws before written, are repealable and alterable even while the government remains the same; fundamentals cannot. . . . If you would know what is meant by those fundamental laws of this kingdom, so much jeered at,

[1] *Scripture and reason pleaded for defensive arms*, April 1643, p. 39. B.M. E. 247 (22). Published as 'by divers reverend and learned divines'.
[2] *The Glorious Name*, Postscript, p. 129.
[3] *An Exposition of the Prophesie of Hosea*, August 1643, p. 407.
[4] *A Fuller Answer*, December 1642, p. 3.
[5] Ibid., p. 8.

it is that original frame of this co-ordinate government of the three estates in Parliament, consented to and contrived by the people in its first constitution and since confirmed by constant custom, time out of mind.'[1] In this remarkable passage, Herle not only attempted to give historical meaning to the phrase 'fundamental law', but made the rather curious suggestion that the existing English constitution was actually first contrived and framed by the Houses of Lords and Commons.

There is no reason to suppose that Herle did not mean what he said. Much the same thing is asserted more clearly and explicitly, in the *Contra Replicant*. The Lords and Commons of Parliament, says the author of that remarkable tract, 'make but one entire Court, and this Court is virtually the whole nation. . . . We may truly say of it that by its consent, Royalty itself was first founded; and, for its ends, Royalty itself was so qualified and tempered as it is; and from its supreme reason the nature of that qualification . . . ought still to be learned. Both Kings and laws were first formed and created by such bodies of men as our Parliaments now are.'[2] This put it rather more credibly than did Herle; but both writers probably meant the same thing. Parker had not suggested it, but it may be that the original paction was quite often conceived in this manner. Time was, declared Rutherford later, when there was no King, but Parliament had then 'the same power that they have now.'[3]

It might be said that the essential contention of the Parliamentarians was that in case of absolute disagreement between the King and the Houses of Parliament, the will of the latter ought always to prevail. Sovereignty in England lies, normally, only with the King in Parliament, but it is for the Houses as representing the whole nation, to direct, supervise and control the King's action. The fiction that a majority vote in both Houses expressed the judgement of the whole kingdom was, by the Parliamentarians, treated habitually as an actual fact. The Houses were the mind and the reason of the kingdom. In times of stress and national danger, the Houses, by reason of their representative character, must needs have a right to decide what measures should be taken. In such a case, if the King refuses to do what is, in their judgement, his duty, they

[1] *A Fuller Answer*, p. 8. [2] *The Contra Replicant*, p. 16. [3] *Lex Rex*, p. 178.

may assume to themselves all the powers of the Crown. So also, if dispute arises as to what is law, it must be for the Houses to declare it. It is for the representatives of the ultimately sovereign nation to define the limits of the King's authority. The King is bound to govern in accordance with a contract expressed or implied. It is for the Houses to judge when and whether his action has amounted to a breach of trust. And, even though normally and by law he has a right to veto Bills presented in Parliament, yet, if the representative body insists on their passing, he is bound to give his assent.

But the views of Parker and Herle and Burroughs were not those of the majority of Parliamentarians. To say that the theory of the position thus roughly and summarily presented represents the views of Parliamentarians as a body would certainly be untrue. No theory even so coherent as this was generally held. On only a few points were the majority of Parliamentarians agreed.

All the supporters of Parliament seem to have agreed that the King held power in some sense conditionally. Yet even on this point the agreement was superficial. A few believed that the conditions on which the King held authority were laid down in an original paction. Others held them to be implied in the actual organization of government in England, and others that they arose from the law of nature or of reason. Some held, with Parker, that it was absurd to suppose that any people would confer unlimited authority on any one. Others asserted that it was simply impossible to do so. Neither God nor man, says Goodwin, could give to any one a right to act unjustly.[1] Rutherford declared that no people has a right to create a pure absolutism. But the majority of writers seem to have thought that the matter was merely one of positive law. If the King abuse his power by breaking law or claiming a right to break it, he may justly be defied and, if necessary, resisted by force. He holds power on conditions defined by law as interpreted by the Houses of Parliament.

It is a mere matter of course that all apologists for Parliament assert or imply that forcible resistance to unlawful commands is always justified. 'Our case is', wrote Burroughs, 'that a kingdom, seeing itself in imminent danger of enemies to

[1] *Anti Cavalierisme*, October 1642, p. 17.

infringe the liberties of it, may stand up to defend itself, yea, although they come forth against it in the name of the King.'[1] For many Parliamentarian writers that seems indeed to have been the whole case. To take arms in defence of the rights of Parliament, says Bridge, is merely a case of the exercise of the universal right of self-preservation. The law of nature enjoins self-defence and 'no human law is above the law of nature'.[2] Obedience to lawful commands is, says Stephen Marshall, a duty to God; but unlawful commands never need be obeyed and if violence be used to enforce them it is merely absurd to say that the attempt may not be met by violence. In resisting such commands, says Burroughs, 'I resist no authority at all'. Goodwin declared that such resistance was not merely justifiable, but was a positive duty. Bridge, Herle, and Burroughs all argued that to say that there is no right of resistance to the King in any case, is to make him practically a despot. There is no real difference, Herle declared, 'between an arbitrary government and a government whose will may not be resisted'.[3] As to Romans xiii., so often appealed to on the other side, there was general agreement that it did not, in England, refer to the King. What for English people the passage means, says Stephen Marshall, is this: 'Let every soul in England be subject to King and Parliament, for they are the higher powers ordained unto you by God.'[4] The assumption that, for England, the King is the higher power of St. Paul was, it was agreed, absurd. By the higher power, says Burroughs, St. Paul meant simply all such authority as is conferred by law.

On all these points agreement seems to have been general. It must, however, be noticed that, from these generally accepted positions there emerged a question which led to a serious difference of opinion. Ferne wanted to know why it was only the King who held power conditionally. If armed rebellion against him be justified on the ground of abuse of power, rebellion against the decisions of the Houses of Parliament must equally be justified on the same ground. Very few Parliamentarian writers faced this awkward question. Most of those who touched upon it declared simply, that to rebel against Parliament was rebellion against the national will it

[1] *The Glorious Name*, Postscript, p. 112. [2] *The Wounded Conscience cured*, p. 2.
[3] *Ahab's Fall*, May 1644. This was Herle's final answer to Ferne.
[4] *A Copy of a Letter*, p. 14.

embodied and could alone express. In no circumstances, it was asserted, could there be any justification for such rebellion. No ground or excuse for it could in fact exist. It was impossible that the Houses should ever take action except in the interest of the people in general. Their judgement as to what public welfare required was usually, at least for controversial purposes, assumed to be infallible.

But not all Parliamentarian writers, who dealt with the question, took this view. In a remarkable passage of his Postscript, Jeremiah Burroughs admitted that it was possible that even a full Parliament, King, Lords and Commons together, might break trust and abuse its power tyrannically. In that case, he declared, it would be but just that the 'people' itself should rebel and 'discharge them of that power they had and set up some other'. After that discharge of Parliament, he added, the kingdom would return to the mere law of nature.[1]

Nor was Burroughs alone in this opinion. Rutherford declared that if the 'House of Commons' abuse its power and act in any way ruinous to the kingdom, the people may rightfully resist, 'annul their commissions and rescind their acts'.[2] That was in 1644, but earlier writers had said much the same. If ever, declared the reverend authors of *Scripture and Reason Pleaded*, King and Parliament should agree and take action to ruin religion and the state, the 'body of the people' have authority to defend themselves and resist such outrageous endeavours. An assertion based on so extravagant a supposition amounted indeed to little. The anonymous author of a remarkable tract entitled *Plain English* went a good deal further. Ferne referred to this tract and Baxter called it 'a shrewd book' and considered that it heralded what he calls 'the change of the old cause'.[3]

The author of *Plain English* was evidently sceptical about the intentions of Parliament and his outlook was somewhat pessimistic. The apathy of the mass of the people in relation to the war, he says, almost makes him despair. We cannot be secure, he declared, 'unless there be some new power established, or the old power—if it be found only to be deficient in respect of

[1] *The Glorious Name*, Postscript, p. 134.
[2] *Lex Rex*, p. 152. [3] *Reliquiae*, pt. I, p. 49.

the persons trusted—in new hands. . . . How shall we be better for our laws, were our laws better than they are, unless some exact course be taken to give us the benefit of them?'[1]

The writer went on to suggest that it was possible that Parliament 'out of an intolerable weariness of this present condition and fear of the event', may agree 'to the making up of an unsafe unsatisfying accommodation'. To do that, he declared, 'would beget a question . . . whether in case the representative body cannot or will not discharge their trust to the satisfaction not of fancy, but of reason in the people, they may resume (if ever yet they parted with a power to their manifest undoing) and use their power so far as conducive to their safety'.[2]

The writer professed unwillingness to discuss the question he had put; but his obvious suggestion of an answer aroused indignation and provoked a direct reply.[3] What, he was asked, did he mean by 'the people' and by what process is it to agree to set aside the decision of Parliament? Does 'the people' mean a majority of the whole population? If so, all the Royalists should be asked to vote. Does it mean the electorate? If Parliament were to be made subject to the electorate our constitution would be completely destroyed. This is no time, he was told, to talk about the people agreeing to resume their power, when, actually, 'they disagree unto death'. The will and judgement of the whole people is expressed, and can only be expressed, by Parliament.

The author of *Plain English* had asked a troublesome question. It should be observed that this clever answer to him suggested questions even more troublesome, especially to followers of Parker. And how, if the people disagree unto death, could it be said that Parliament any longer expressed their will? Between them the two writers had put questions that none on their side as yet attempted to answer.

When it came to defence of the more extreme of the claims put forward by the Houses in their declarations, there was much hedging, hesitation and ambiguity. It was frequently asserted that the Houses of Parliament can, of their own authority, in case of dispute, declare what is law. But few even of those who made that assertion most clearly and

[1] *Plain English*, January 1643, p. 10. B.M. E. 84 (42). [2] Ibid., p. 20.
[3] *A Plain Fault in Plain English*, February 1643. B.M. E. 88 (30).

positively, saw that they were really claiming legislative power for the Houses. There is apparent a strong tendency to say that while legislative power belongs only to King, Lords, and Commons together, yet whatever the Houses declare to be law, must be accepted as law, without question. One writer, having explicitly denied that such declaratory power involved any power to make law, betrayed his confusion by adding that if the King possessed this same power then legislative power would be his alone.[1] 'We must distinguish', says another, 'between the declaring or adjudging of a case by the reason of the old law and the making of a new law.' Unfortunately, he went on to assert that a declaration by the Houses as to what is law binds the King and every one else and that the Houses alone can determine the limits of their own powers.[2] An extreme case of the common confusion between legislative and judicial action is that of a writer who argues that because the Houses form the 'highest court', the King can have no right to refuse assent to Bills.[3] The confusion on this point is the more remarkable because the tract in which it occurs is one of the best among the undistinguished.

The same sort of confusion appears in discussion of the King's right to refuse assent to Bills in Parliament. Denial, more or less absolute, of his right to a 'negative voice' is frequent, but the reasons given vary considerably. One writer says that law is made by the consent of a majority and therefore no single man can possibly have a right to obstruct.[4] Another declares that it is the intention of our constitutional arrangements that all advice given by the Houses should be taken.[5] Others are content to refer to an imaginary coronation oath or simply to an oath to do justice. One boldly declares that all records show that the King never had a right to refuse assent to Bills.[6]

On the crucial question of the declaratory power some writers, however, made quite definite assertions. 'The Parliament', declared Burroughs, using that term of the Houses

[1] *Reasons why this kingdom ought to adhere to Parliament*, August 1642.
[2] *A Reply to the Answer*, February 1643.
[3] *The Subject of Supremacy*, June 1643. B.M. E. 106 (1).
[4] *Aphorisms of the Kingdom*, October 1642.
[5] *A Political Catechism*, May 1643. B.M. E. 104 (8).
[6] *Will and Law, Reason and Religion, Treason and Rebellion*, June 1642. A pamphlet with a rather attractive title but ranking among the silliest. B.M. E. 105 (20).

alone, 'hath a judicial power of interpreting the law of the State, so as that it is to be accounted Law which they interpret to be so. I do not say that we are bound to believe that whatsoever interpretation they make was the scope and intention of that law when it was first made. But this I say, that their interpretation must be accounted as much binding to us for obedience, as the scope and intention of that Parliament that first made that law.'[1] The Houses, in fact, can give any new meaning they please to any ancient law. Yet, apparently, Burroughs did not see that he was attributing to the Houses power to make new law.

Herle, though not so clear, was equally emphatic on this point. If, he asked, the King and the Houses of Parliament disagree as to the law, how is the question to be decided? It would be unreasonable to allow the King himself to decide, for he is certain to be biased in his own favour and, besides, is not a lawyer. The Houses, on the other hand, can have no interest but in public welfare. Power to declare law in general must, he admitted, be arbitrary. That cannot be helped; such an arbitrary power is needed and must be placed somewhere. It resides naturally, 'where it was at first, in the consent and reason of the State'.[2] Yet, for all that, Herle declared that no one claimed for the Houses, as such, power to make law.[3]

More drastically dogmatic was John Goodwin. 'There is no law', he says, 'better known than that the High Court of Parliament is the surpeme judicatory of all questions and disputes in law.' It must, therefore, be for this court 'to determine and define what lawful authority and what rebellion is in England'.[4] For him the two Houses have become, quite indubitably, 'the High Court of Parliament'.

A great deal is said concerning the distinction between the King's personal and his regal will. The King may give an order that something not unlawful in itself shall be done, without having a legal right to give the order. In that case he need not be obeyed. Or he may order something to be done which law forbids any one to do. In that case he should not be obeyed. All this was fully stated and admitted by

[1] *The Glorious Name*, Postscript, p. 139.
[2] *A Fuller Answer*, pp. 16–17.
[3] *Ahab's Fall*, p. 213.
[4] *Os Ossovianum*, April 1643.

Ferne and other Royalist writers. But writers on the side of Parliament, frequently spoke as though all orders given personally were merely expressions of personal will. In doing so they destroyed their own distinction and talked mere nonsense. Many seemed to think that the King has no right to give any orders at all without Parliament's direct approval. On the other hand, it was asserted that judgements or orders of the Houses always express the true royal will. One writer says that Parliament having decided that the orders given by the King to his army are illegal orders, we are all justified in assisting to quell what is really a monstrous breach of the peace. It is the King's royal will that we should do so.[1] It is frequently, therefore, asserted that it is the Royalists who are rebels: Parliament is fighting to enforce the King's will. But most of what was written on this matter was so confused that no inferences can be reasonably drawn from it.

What is perhaps the most serious difficulty in the interpretation of Parliamentarian writings has yet to be mentioned. Whether a writer is defending the claim of the Houses to declaratory power, or the claim that the King is bound to follow their advice, or the claim that they are empowered to express his regal will whatever he himself says, there is constantly a doubt as to what is meant. Some appear to think that these claims are valid only in exceptional circumstances of crisis and danger. One writer declares that while the King is undoubtedly an 'estate' of Parliament, yet if he deserts his post, his authority remains in the Houses alone.[2] Another says that this happens if the King misuses his power.[3] Whether, when the King absents himself and refuses to co-operate with the Houses, they can act as a full Parliament without him, is, says another, a question that can only be decided by the Houses themselves.[4] Sovereignty, says the author of *The Subject of Supremacy*, is normally shared co-ordinately by King, Lords, and Commons. But 'the kingdom hath an extraordinary jurisdiction in extraordinary times and extraordinary dangers; and the King's ordinary jurisdiction ceaseth'. The extraordinary jurisdiction of the Houses, which are equivalent to

[1] *The Kingdom's Case*, May 1643. B.M. E. 100 (9).
[2] *Maxims Unfolded*, March 1643. B.M. E. 94 (3).
[3] *The Subject's Liberty set forth*, 1643. B.M. E. 101 (9).
[4] *Propositions tending to accommodation*, September 1642. B.M. E. 118 (38).

the kingdom, arises, he added, 'from the fundamental laws of all nations'.[1] Relatively few writers definitely and distinctly asserted that the rights claimed by the Houses belonged to them permanently and in all circumstances. Others appear not to know what it is they mean. Even Parker failed to make his view clear.[2]

A claim of full sovereignty for the Houses of Parliament simply as such was, evidently, not far off. But very few writers made it, or even came near making it. If, logically, they did so, they were usually unaware of the fact. Most of Parliament's defenders seem to have been sure of one thing only: that they were right in resisting by force the enforcement of illegal claims and of obedience to unlawful commands.

They felt utter distrust of the King and did not believe in the sincerity of his declarations. On the other hand, they were unwilling to commit themselves to any theory of the State or to any theory of the derivation of political authority. They were aware, perhaps, of a danger in such speculations. They tried to keep a stand on law. But they were in a difficult position. The Houses had made claims they felt bound to defend, that could not, in a strictly legal sense, be defended. Many of them, it seems, would have liked to say that such claims were valid only in the exceptional circumstances of the moment. But the difficulty of defining such circumstances and of proving their existence was too great. Many writers escaped all difficulties by doing little more than repeat the declarations of the Houses. Others refused to argue at all: they took refuge in bald assertions about the Royalist party and its wicked intentions. Many escaped into ambiguity. 'Never be intelligible', was Oscar Wilde's advice to young writers. 'To be intelligible is to be found out.' A good deal of the ambiguity of Parliamentarian writings was probably a result of laying that truth to heart.

Not a single Parliamentarian writer ventured to say that the real object of the rebellion was to transfer the power of the Crown to a relatively wealthy landowning and trading class. Few dared allow themselves to think so; fewer still, probably,

[1] *The Subject of Supremacy*, p. 12.

[2] The author of a tract entitled *A Discourse upon the Questions in Debate* regarded the claims and action of the Houses as justified only by the need of self-defence. September 1642. B.M. E. 117 (8).

did think so. One writer, indeed, made a frank admission that 'Parliament' represented little more than the 'nobility and gentry'. But he went on to declare that the establishment of aristocratic government was, in any case, impossible, because the 'multitude' would not submit to it. He was oddly sanguine. Only a few writers, in fact, really faced the issues. But there were, nevertheless, some who went as far as possible, in claiming unlimited authority for the Houses of Parliament in all circumstances and relations.

§3. EXTREMISTS

Many Parliamentarian writers of this time made assertions that logically amount to a claim of full sovereignty for the Houses of Parliament as such. But very few either intended to do so or saw that they were doing so. Only by a few was the claim made at all definitely or distinctly.

It seems to have made its first appearance in a remarkable pamphlet of December 1642.[1] The anonymous writer began with the common declaration that the judgement of the Houses is that of the whole kingdom, 'which is never otherwise to be known but by the Parliament itself'. Parliament may alter or abolish anything it judges to be mischievous and 'break through all opposition'. Even if evil laws and customs have been established for thousands of years 'there is no pleading for their continuance against the mind of the Parliament'.

The author proceeded to make it quite clear that by 'Parliament' he meant the Houses simply. He had the audacity to declare that the King's claim to be a part of Parliament had never been heard of till quite recently. No magistrate by virtue of his office is in any sense a member of Parliament, and the King is merely 'the highest magistrate'. His chief function is to see that subordinate magistrates do their duty. But all magistrates alike are subject to Parliament and it can place and displace them as it thinks proper.

Kings, he declared, have for so long so successfully encroached upon the rights of Parliament, that nowadays people are surprised when told that the King is subject to Parliament.

[1] *A Discourse between a resolved and a doubtful Englishman.* B.M. E. 128 (41). It has been attributed to Parker but is not consistent with the view expressed in his *Observations,* and can hardly be his.

Parliament is now gradually revealing the full extent of its powers. Out of respect for the King it treats him as an erring son, and refrains from claiming its full rights. He pointed out, however, that in its declarations it had already claimed an unlimited authority.

The doubtful party to the dialogue was not allowed to say very much, but the author was too clever to make him talk nonsense. He declares that, on Resolved's own showing, Parliament's declarations are misleading. The Houses, he argues, should state their claims definitely. They cannot hope to succeed except by resolving all doubts and frankly explaining what they are aiming at. Resolved finally recognizes the justice of this view and the two of them agree to petition Parliament to make a full statement of its claims. So the tract ends with what appears to be criticism of Parliament's proceedings.

A month or two later there was published another pamphlet almost equally remarkable.[1] In spite of considerable confusion and ambiguity, the writer of this quite definitely claimed that the Houses of Parliament could make law with or without the King's formal assent. He seems to have started from a notion that there exist certain absolute principles which ought to form an unalterable core in all constitutions of government. 'The fundamental laws of England', he says, 'are nothing but the common law of equity and nature reduced into a particular way of policy.' The demand that they should be produced in the form of written law is altogether unreasonable and tends to the destruction of our constitution. In the English constitution it is actually the supremacy of the Houses of Parliament that is fundamental. They are bound by nothing but an obligation to act with a view to the public welfare.

It is a fundamental law of this country that we shall be governed by a King and Parliament. The King is by law merely the head of the executive; and it is part of the business of the Houses to see that he does his duty under the law they make. He has no real part in legislation. He has, indeed, a right to confirm law made by the Houses; but it is only a right to confirm. He has a right to give an assent that is, in fact, fictitious. If he refuse to assent to any Bill it may, nevertheless, be assumed that his assent has been given. On this all

[1] *Touching the Fundamental Laws*, February 1643.

important point the writer's declaration was quite explicit. 'The King is juridically and according to the intention of the law in his courts, so that what the Parliament consults for the common good, that, by oath and the duty of his office and the nature of this polity, he is to consent unto; and in case he do deny it, yet, in the construction of the fundamental laws and constitution of this kingdom, he is conceived to grant it, supposing the head not to be so unnatural to the body that hath chosen it for good and not for evil.'[1]

Most daring and original of all were the views expressed in a tract entitled *A Disclaimer and Answer* that appeared a little later.[2] It was written in direct reply to a pamphlet which stated many of the usual Royalist objections to Parliament's declarations and proceedings.[3] It can be interpreted only as a claim of full sovereignty not so much for the Houses of Parliament as for the House of Commons alone.

'In this kingdom', we read, 'the people originally agreed Laws, such as they found by experience to be good for them, which were, therefore, called the customs of the kingdom, customary law, common law, not imposed upon them by Princes or by Act of Parliament but assumed by them. . . . Then they chose one from among them to be their King, for the defence of their laws, bodies, and goods, and for these purposes only they gave him power to govern them.' Also they ordained Parliaments 'for the making of such new laws as should be requisite and invested them with all power for the good of the kingdom and the people'.[4]

All this looks as if it had been taken from Parker's *Observations*, and does not, of itself, amount to much. But the anonymous author made it quite clear that when he said 'all power' he meant just what he said, and that 'Parliament' for him was equivalent to the House of Commons simply. 'He knows nothing', he wrote, 'of the nature of Parliaments that knows not that the House of Commons is absolutely entrusted with our persons and estates, and by our laws invested with a power to dispose of them as they shall think meet, not only by making new laws but also, as they are a great Court above all ordinary

[1] *Touching the Fundamental Laws*, p. 9.
[2] *A Disclaimer and Answer of the Commons of England*, May 1643. B.M. E. 100 (23).
[3] *The Remonstrance of the Commons of England.* This is in the Somer's *Tracts*, IV.
[4] *A Disclaimer and Answer*, p. 17.

courts, to govern us and determine of all things proper to the power and jurisdiction thereof, in all things tending to the conservation of the commonwealth'.[1] All inferior courts are, he declared, bound 'to obey the commands and injunctions of the House of Commons to them'.[2] Talk about 'known laws' is all nonsense. The King is ignorant of law 'as we for the most part of us are'. The only known law is that declared by Parliament.[3] 'When we chose our knights and burgesses for the Parliament we entrusted them with all the power we could invest them withal to do whatsoever in their wisdom they should think meet.'[4]

It is possible that the writer of this pamphlet did not really mean to claim full and sole sovereignty for his knights and burgesses. Yet if his language does not mean this, it is difficult to say what he could have meant. Nor is it really surprising that even so early as 1643, such a view should be taken. The claims made by the Houses were conceived of as based on their representative character. But, as was pointed out by several writers, the House of Lords represented nobody.

A few other writings could be cited which come very near to claiming full sovereignty for the Houses of Parliament. Of these a tract entitled *Symbolium Veritatis* perhaps comes nearest. The author of this seems to assume that any and every command given by the King, unless under the immediate authority of the Houses, is an expression of mere personal will and of no account in law. Not only, he declared, are the Houses not fighting against the King, but 'it is impossible they should'. It is equally impossible that the King can be fighting against Parliament. The King is 'in his Commons'. When Parliament is sitting the King's will is always the will of the Houses.[5] But there is a certain ambiguity about these assertions. I know of no writings except those previously cited in which the claim is made distinctly. Though much of what they said might have been taken from the *Observations*, the authors of the *Discourse* and of the *Disclaimer* went, in conclusion, beyond Parker and beyond Prynne.

[1] *A Disclaimer and Answer*, p. 2. [2] Ibid., p. 17. [3] Ibid., p. 6. [4] Ibid., p. 4.
[5] *Symbolium Veritatis*, September 1643. B.M. E. 67 (9).

§ 4. VISIONARIES

'In the study of politics', wrote Henry Parker, 'the more confident we are, commonly the less proficient we are; for there is no other study wherein the passions of men do more impetuously contravene and overturn right reason.' Though he had ample reason for the remark, he could have found little to justify it in the controversy of the early years of war. One of the most marked and significant features of Parliamentarian writings in 1642 and 1643 is the almost entire absence of any appearance of passion and of any sign even of enthusiasm for the cause. It is even more marked than is the absence of any strong feeling about religion. A very large majority of these writings are simply argumentative or simply dogmatic. On both sides the controversy was for the most part conducted reasonably and with good temper. Ferne and Spelman, Herle, Burroughs, and Bridge argued with each other without rancour and abuse. There is much misrepresentation but, though some of it may be dishonest, it seems to be due chiefly to ignorance. The tone and temper of the controversial writings of both sides is alone sufficient to demonstrate the falsity of the notion that controversy at this time was habitually conducted with abusive and vilifying violence. Prynne stands almost alone in emulating the furious diatribes of Milton. Even those writers who repeated the slanders circulated by the Houses in 1642, did so without passion. They were trying to win support; and they simply asserted, as a fact to be considered by all neutral or indifferent people, that the Royalists were Papists or parasites or profligate ruffians. They show little or no sign that the dreadful picture they present aroused any strong feeling in themselves.

Far more passion and bitter feeling had been exhibited in the controversies about religion of 1641. But religion was now quite in the background of most men's minds, if present there at all. Yet there were a few who thought of the existing situation primarily in terms of religion. Among these was a very small number of people in whom the illusion that the Royalist party consisted of Papists and atheists bent on destroying true religion seems to have produced a kind of mystical fanaticism. These visionaries, in 1643, formed a very small

and isolated group. Though traces of the feeling they exhibit can be found here and there, I know of only two writers of this time who gave it full expression.

John Goodwin, born towards the end of the previous century and at this time a London vicar, may fairly be called a mystic, and might be called a great man. He cannot justly be described as a fanatic; yet in the visionary idealism he displayed at the start of the war, there was an element of fanaticism. His *Anti Cavalierisme*, of October 1642, is an astonishing production. So far as its argument goes it is, indeed, quite commonplace, reproducing the stock arguments and assertions of Parliamentarian apologists. What gives it distinction is the sense it exhibits of tremendous issues involved in the coming struggle. Goodwin, it seems, seriously believed that the Royalist party was bent on destroying alike liberty and religion. His tract might be described as in the main a fiery exhortation to take arms for Parliament and the cause of God. 'If', he told people in general, 'you shall hold out this one impression and onset and make good the ground you stand on against them, you shall break their cord asunder and cast their bands from you for ever; you shall make such an entailment of this precious inheritance we speak of, your liberty, to your children and children's children, that they shall never be able to cut off. If they be but now broken, they are not like ever to make themselves whole again; if you will be persuaded to be men of wisdom once, you may be men of comfort and peace ever after.'[1]

What was it that Goodwin was thinking of when he wrote this? Can it have been merely of the constitutional claims of the King? Judging from his own words, these cords and bands that were to be broken, cannot have been only the King's. There is a suggestion that Goodwin, anticipating much that developed later, was thinking of the war as an effort to break a yoke of oppression from the necks of common folk.

More striking still is a passage that was quoted, with astonishment, by the Royalist writer, Dudley Digges. 'I will set down his words at large', Digges wrote; 'for they are so strange, sober men might doubt the faith of a relation.'[2] Goodwin had argued that it was every man's duty to consider whether commands of the King were just and that forcible resistance

[1] *Anti Cavalierisme*, October 1642, pp. 38–9. [2] *The Unlawfulness*, etc.

to unlawful commands 'is not only lawful but matter of duty and obedience unto God'.[1] That they had a right to resist by force the unjust action of their rulers was, he declared, hidden from the early Christians by divine providence. 'The frame and tenor of God's after-dispensations did require that such liberty should be hid from them, or at least that they should not make use of it; as, on the contrary, the nature and purpose of those dispensations which God hath now in hand, requires that this liberty should be manifested. . . . We know Anti-Christ was then to come into the world, as now we know that he is about to be destroyed.' Had Christians then known that they may lawfully defend themselves against unlawful assaults 'by what pretended authority soever made upon them', anti-Christ would never have been able to establish his dominion, as it was divinely arranged that he should. 'Whereas now, on the contrary, the time of God's pre-ordination and purpose for the downfall of Antichrist drawing near, there is a kind of necessity that those truths should now be awakened. . . . Evident it is that they are the commonalty of Christians, I mean Christians of ordinary rank and quality, that shall be most active. . . . Consider that place: And I heard another voice from heaven, saying, Come out of her, my people, that ye be not partakers of her sins, and that ye receive not of her plagues. For her sins have reached unto heaven and God hath remembered her iniquities. Reward her even as she rewarded you and double unto her double according to her works: in the cup which she hath filled, fill to her double. Revelation xviii., 4, 5, 6. Now that this service shall be performed unto God by them, contrary to the will, desires and commands of those Kings and Princes under whom they live, it appears by that which immediately follows in verse nine. And the Kings of the earth who have committed fornication and lived deliciously with her, shall bewail her and lament for her, when they shall see the smoke of her burning.'[2]

Well might Dudley Digges have thought this passage strange. He assumed that by anti-Christ Goodwin meant, simply, the Pope or the Roman Church. But it does not seem that it can have been so. Were it so the exhortation to the English people to come out of her would be pointless and even meaningless.

[1] *Anti Cavalierisme*, p. 10. [2] Ibid., pp. 30–2.

Charles I may have been conceived as living deliciously with her, but surely not the English people. There is here, again, a vague suggestion of some vast regenerating change to be brought about by the war. All the powers of evil, it seems, are to be finally broken.

Very similar is the view expressed by the author of an anonymous tract, entitled *Powers to be Resisted*, that was published towards the end of 1643.[1] It is written in the form of a dialogue between persons called A and B. A is a simpleton, well-meaning but bewildered, seeking enlightenment. B undertakes to instruct him. The author makes his points in no logical order, goes back and forth, and frequently repeats himself. This arrangement or lack of arrangement gives an air of reality to the dialogue which, once at least, becomes quite dramatic. A, however, has little to say.

The writer did not trouble himself with legal argument. For him the war was, quite simply, a fight between God and the Devil. He did, however, lay some stress on the distinction between the King's personal and his regal will. We shall never admit, he declared, that we are fighting against the King. 'There is a wide difference between what a King does by law and what his will does without or against law.'[2] But it seems that to the writer mere 'private will' was always evil. 'Self will, carnal reason, call it what you will, an evil spirit it is.'[3] It exists in every man and must always be resisted. 'True it is, and let the King look to that, God chargeth all upon him which he commands or suffers to be done.' But 'as King over a free people he cannot enslave his people and destroy his kingdom'.[4]

But it quickly becomes evident that the real justification for armed resistance was to this writer's mind the atrocious character of the Royalist party, its proceedings and its intentions. Again and again he speaks of the Royalists as 'dogs, swine, and scorpions' and as blasphemers who trample underfoot the pearl, religion. Not all of them, he explains in a marginal note, are actually swine; 'he only who opposeth religion tramples under the pearl'. Some of them are merely dogs and scorpions. They are worse than Saul, who 'in the

[1] Thomason gives the date December 1643, but no month is given on the title-page.

[2] *Powers to be Resisted*, p. 2. [3] Ibid., p. 3. [4] Ibid., p. 8.

dark night of his ignorance' did what they do 'in the light and sunshine of the gospel'.[1] 'These brutish men', he declares, 'do not pretend a defence, they intend an offence, robbing, spoiling, murdering, destroying all places and persons whereto their rage can reach; and to trample under the pearl.'[2] It seems almost as though he thought of the Royalists as lunatics or as possessed by devils. 'This I do affirm: that the Adversary and enemy is mad, stark mad with rage, doubly mad, mad upon his idols and mad with rage.'[3] Over and over again he repeats that the Royalists are mad with rage: and not they only. A ventures to assert that 'all the nations upon the earth are on the King's side'. 'Yes', B answers, 'all the nations that are angry against our side, because the Lord Christ has taken to himself power now; all these are on the King's side; and also all the sottish, brutish pastors and people all over the Christian world. All these are mad with rage.'[4] It was an illusion of a type that seems to be recurrent among revolutionary enthusiasts.

Digressively and incidentally, the writer indulged in a good deal of denunciation of Ferne, whose writings he admitted he had not read. Why trouble to read them? It is enough to look at his title-page where he tells you what he means to prove, and then at the conclusion where you see what he thinks he has proved.[5] That is enough to stamp him a knave or a fool or both. 'I call God to record now that Ferne is a Devil, a Satan, an Adversary.'[6] 'He contends against God and religion.' He defends the swine and, in fact, is one of them.

Though he had not read Ferne, he made a sort of answer to him. Does not the law of God, he asked, 'warrant us to maintain the laws of God, the rights of His kingdom, the liberties and privileges of His subjects . . . to defend all these with the sword, against those who would destroy, overthrow, make void and null all the laws of God's kingdom and of His kingdoms on the earth'?[7] Dogs fly at our throats, swine trample on our pearls, what would you have us do? A feebly suggests recourse to prayers and tears. 'Contend against dogs and swine with prayer! I never heard the like since I was born.'

'The King', objects A, 'protesteth that he fights for the

[1] *Powers to be Resisted*, p. 7. [2] Ibid., p. 17. [3] Ibid., p. 7. [4] Ibid., p. 9.
[5] Ibid., pp. 15, 16. [6] Ibid., p. 49. [7] Ibid., p. 13.

King of Heaven and for all the rights, liberties, and privileges of his Parliament on earth—I mean His Church. Ye say the very same thing. Ye are for the King, ye say: the King is for you, he says. . . . There is the riddle.'[1] It was no riddle to B. For the truth and righteousness of Parliament's declarations, he answers, 'the witness is in Heaven. To Him his servants have appealed: the Lord God of Gods is their witness here and it is enough; though the Adversary writes books against them, no matter, their record is on high.'[2] The King's assertion that he is defending religion is a horrible blasphemy. 'Whom takes he to him to defend religion? None other but atheistical ruffians, notable murderers, abominable idolaters.' If he is defending any sort of religion it is Popery. The Royalists are in rebellion against the King of Heaven. 'Who is the chief leader in this great trespass against the Lord?' Reluctantly and almost with terror the unhappy A is forced to admit that the King himself 'is chief in this rebellion against the Lord'.[3] Long ago, the writer declares, he ordered the profanation of the Sabbath and now 'his throne is shaken for this'. Judgement and justice are the pillars of a throne and he has himself cast them down. Now 'the sceptre, the crown, the throne must all fall flat to the ground'.[4]

'I never prayed', he says in another place, 'for his coming to his Parliament. . . . I prayed and do pray that he may feel it to be an evil and a bitter thing that ever he departed from his Parliament; for ever since he has pursued the souls of the righteous and their blood has pursued him. . . . There is between him and the Parliament depths, even seas of blood. . . . And my prayer is that the King may fall into those deeps, that from thence he may cry to the Lord' for pardon. If ever he is to return to his Parliament it must be after he has passed through the depths and come forth 'deeply humbled, a man of sorrows'.[5]

Parliament, on the other hand, was to him, at the moment, all that it should be; though one wonders how long that attitude lasted. Most of all he praises its piety. It is now trying to find out 'the right way of God's worship'. To do that, he admitted, is not easy. 'The way of his worship and service has

[1] *Powers to be Resisted*, p. 21. [2] Ibid., p. 23. [3] Ibid., p. 32.
[4] Ibid., p. 34. [5] Ibid., pp. 10, 11.

lain as a path not used, quite neglected, and overshadowed by I know not what accursed things, the inventions of man . . . and thereby hidden from the eye these I know not how many years.'[1] But the Westminster Assembly, he believed, would set all things right. 'A glorious reformation' is coming, 'doubt it not'.[2] 'The cause must prosper', he declared, 'we know it must. There is a seeking people who seek not great things on earth, neither honours nor profits, nor pleasures, nor long life, nor the life of their enemies for a prey, their conversion rather. . . . They seek not so much that the sword shall be removed, as that the sins may be removed that brought the sword and furbished the same.'[3]

The finest and most striking passages in this astonishing piece of writing occur towards its close. Here the absolute faith of the writer in the triumph of that cause which he saw as the cause of God, blazes into real eloquence. A, much depressed, declares that the party is in a dangerous position, hard pressed and threatened with famine in London. We had thought, he says, to have a speedy victory, but now God 'seems to go back' and our case 'was more hopeful two years ago than now'. B's answer was cheerfully derisive. 'We thought God would have ended the war quickly: who bade us think so? . . . We have walked contrary to Him all our years and ye thought He would walk contrary to us but one year. . . . See how ignorantly we speak: God goes back! God does not go back; we go back; we change, there is no change in God. . . . We go back; God goes forward and carries on His work.' We are like the barbarian who thought Paul would fall dead when the viper fastened on his hand. Parliament will shake off the poisonous beast. 'I know it shall be so, as sure as the Lord our God is Lord over the lords of the world; so sure as the king of Spain is King over the Kings of the earth, so sure.'[4] Very noteworthy is this absurd interjection about the King of Spain.

A had said that the Scots army would come too late. The answer is that you must not trust your weight to a reed. 'It is so if we make flesh our arm; if we lean thereon, the everlasting arms withdraw themselves from underneath; and they must fall who have not underneath the everlasting arms. We said in our haste: Help will come too late. Help never came

[1] *Powers to be Resisted*, pp. 44–5. [2] Ibid., p. 47. [3] Ibid., p. 10. [4] Ibid., pp. 55–7.

too late unto the Church: it comes even in the fittest time, in season.'[1]

'Let not your heart be troubled', he concluded; 'chide distrustful thoughts about the famine and the sword; be assured that faith fears not a famine: it laughs at the sword. . . . Look you there! what can the dogs and swine and scorpions do against these servants of the Lord?'[2]

In the whole body of Parliamentarian writings of these years there is hardly anything that is at all like this. Something of the same fanatical faith appears, indeed, in a tract signed John Vicars in 1644.[3] The cause of Parliament, this writer declared, is 'God's unquestionable cause'. Those who oppose are either ignorant or wicked. They are content with a 'half reformation', and to be that, 'in effect is but downright atheism or, at best, a back down to Papistry'. Laud is the arch-traitor and Prynne 'a saint and sufferer for Christ'.

Goodwin's vision was wider, if less definite, than that of the author of *Powers to be Resisted.* But in both there is visible the same belief in a glorious coming reformation and the triumph of the Lord and His saints. Both were possessed by similar strange illusions. There is no likelihood, and no reason whatever to suppose, that their faith and outlook were shared by more than a very few. Their writings are in quite startling contrast to those of the mass of Parliament's adherents. Yet both seem to point forward to the aspirations of Levellers and Fifth Monarchy enthusiasts. Their writings are the first definite expressions of the hopes and dreams of social and religious regeneration that were generated and developed, far and wide, in the course of the struggle.

[1] *Powers to be Resisted,* p. 58. [2] Ibid., pp. 59–60.
[3] *A Looking Glass for Malignants: or God's hand against God haters,* February 1644. B.M. E. 33 (18).

III. THE ROYALISTS

Chapter I

ROYALIST WRITINGS IN GENERAL

A CHAOTIC confusion of different points of view makes difficult any precise classification of the writers on the Parliamentarian side of the controversy. On the Royalist side that is not the case to anything like the same extent. Nearly all the Royalist writers of the years 1642–1644 fall naturally into one of two groups. That which will here be first considered is a group that is very distinct except at its extreme edges. It is relatively unimportant but not without serious significance. It consists of writers who can hardly be said to have any theory either of the State in general or even of the English constitution. They were simply concerned to show that armed resistance to the King is forbidden by God in all cases; and their argument is almost, if not quite exclusively, scriptural. It might be supposed from the language used by some of them that they conceived of the King of England as an absolute monarch in the full sense. It is, however, very unlikely that any of them actually did so. It is certainly significant that none of them say so. On the other hand, some of the most extreme and emphatic in assertion among them went out of their way to make it clear that they did not attribute to the King any power to make law of his own authority simply.

If there were any Royalists who, in 1643, regarded the King as an absolute monarch able to make law as he pleased, they must have been exceedingly few. I find no definite assertion to that effect before 1647; unless the unpublished and unfinished *Patriarcha* of Sir Robert Filmer is to be counted. Filmer published nothing until 1648. Even then, when the position had completely changed, he stood almost alone. In 1647, Robert Grosse roundly declared that the King 'by authority given him by God can, when he sees it fitting, whether his subjects will or no . . . either make or abrogate the law'.[1]

[1] *Royalty and Loyalty*, July 1647.

No similar assertion is to be found earlier. In that same year, Michael Hudson, one of the most thoroughgoing advocates of legal toleration in religion, attributed to the King all powers save that of constraining the religious conscience. But if any one held such views as early as 1644 no one stated them. So far as such a claim was logically implied in the earlier writings it would seem to have been inadvertently. The Royalist writers of those years included no such absolutists as Filmer and Hudson.

The second and major group of Royalist writers includes all those whose work had any philosophical or even any real controversial value. With the partial exception of Maxwell, no Royalist writer made any attempt to expound systematically any politico-philosophical system. They were concerned mainly with two things: with criticism of the claims and theories of the Parliamentarians and with argument to show the groundlessness and the danger of any claim to a right of forcible resistance to sovereign authority. Their political philosophy is expressed only incidentally in the course of such argument and criticism. The standing ground of writers of this group was that conception of the constitution which appeared in the royal declarations of 1642. They found it, or thought they found it, in law and custom and in history. Taking their stand on law, they felt no need to expound a philosophy: what they had to do was to break down the adversary's case. They maintained that it was the King who was defending the constitution, the law of the land and the liberty of the subject, which the action of the bodies which called themselves 'Parliament' threatened, or tended, to destroy.

Different as were the views expressed by these two main groups of Royalist writers, there is one thing that unites them all. Whether they appeal to St. Paul or to the law of the constitution established, they all appear to agree that a recognition of a right of rebellion in any one for any cause would make stable government impossible. No society in which such a right is recognized could, they thought, long remain orderly. Of all possible evils, civil war is the worst: it is the sure way to overthrow the rule of law. It is just the rule of law that they stand for. The sovereign for them was the King. He was not, in their view, an absolute sovereign; but there must be no

rebellion against him, whatever happens. The claim to a right of rebellion leads straight, they maintained, to anarchy; and the triumph of the rebellious Houses of Parliament would lead to their own ruin. The Royalist apologists were prepared, it seems, to recognize an absolutism of power in the King in Parliament. Not much harm, it seemed to them, could come of that recognition. But the idea of absolutism in the King was almost as hateful to them as that of the absolutism of the House of Commons. 'Absolute power', wrote Sir John Spelman, 'tends not to prosperity but to the destruction of itself.'[1] They believed in a system of check and balance. At bottom, it seems, they were all arguing from a sense of expediency. They were united by a sense of danger, not only to the constitution as they conceived it, but to the rule of law and to the whole social order and all the traditions of the England that many, at least, of them sincerely loved.

[1] *Certain Considerations upon the Duties both of Prince and People*, 1642. In Somer's *Tracts*, IV, p. 328.

Chapter II

ROYALIST ARGUMENTS FROM SCRIPTURE

IT will be simplest to begin by considering those Royalist writers who had little or nothing to say except that forcible resistance to the King is forbidden by God. Most of them say practically little else; some not even so much. One was content to declare that the King is God's annointed and rebellion as the sin of witchcraft.[1] The author of a pamphlet professing to give 'reasons why' the King should be supported, declared that Kings are appointed by God and that to rebel is to 'become the son of the Devil'.[2] But no reasons for the statement appear. Yet another says that, while we should not obey commands unlawfully given, passive resistance only is ever justified. And again, no reason is given for the assertion except that the King is the Lord's Annointed.[3]

Nearly all the writers of this group who can be identified were ecclesiastics. It is probable that few laymen would have been content to argue as they did. But there would seem to have been many among the clergy who believed that they could settle the question of the rightfulness of rebellion against Charles I simply by reference to a few phrases of St. Peter or St. Paul, and consideration of the case of Saul and David. They seem invariably to have ignored entirely the fact that their adversaries contended that, for England, the King was not the higher power of St. Paul. It might almost seem that they were ignorant of this fact; yet in the case of such a man as Usher that is hardly credible. But they speak as experts in Holy Scripture and not as the scribes of Parliament. They show no consciousness that their assertions are irrelevant to the argument of their opponents. They say, in effect, that because St. Peter speaks of the King as supreme, therefore Charles I is 'supreme' and so must be the higher power of Romans xiii. Resistance to him, consequently, ensures

[1] *A Treatise in Justification of the King*, 1642.

[2] *Reasons Why this Kingdom as all others . . . ought to Adhere to their Kings, whether Good or Bad*, October 1642. E. 124 (13).

[3] *The Sovereignty of Kings*, 1642.

damnation. The dogmatic assurance of their assertions is amazing, seeing that the futility of such argument was being pointed out at the time.

Yet it was just in this way that Usher argued in *The Sovereign's Power and the Subject's Duty*. He gave all the usual quotations from the Bible and calmly concluded that Buchanan and Junius Brutus had, as he says, made themselves infamous by contradicting St. Paul. It is the same with Robert Mossom, Bishop of Derry and with Thomas Swadlin. Mossom indeed can hardly be said to have argued the matter at all. He appears to have been under the impression that the law of the English constitution was laid down in the Scriptures. Swadlin's argument was wholly scriptural and based on the usual assumption that the King is the higher power. He declared that the Holy Ghost himself had answered Buchanan and Mariana and the *Vindiciae*. But, in reading him, one feels that his argument counted for little even with himself. Swadlin, I think, was a pacifist who believed that in any circumstances violence was wrong.

Few of the writers of this group have anything else to say; and it is significant that they say no more. They say, in effect, that whatever the law may be, God has spoken clearly in the Scriptures. None of them say that God has given to the King unrestricted power, and there is no reason to suppose that any of them thought so. Some of them definitely assert the contrary. All God has done is to forbid active resistance to the King in any case. It was a restatement of early Tudor doctrine in conditions that made it absurd.

It is, indeed, difficult to understand such an attitude as that of Usher or Swadlin. It is still more difficult to understand those who say that the King is the Lord's Annointed and were content to leave it at that. It is not improbable that some of these writers were making conscious appeal to popular ignorance and superstition. There were very many possible readers and hearers who would be quite unaffected by legal arguments or by theories which they would not begin to understand. Probably the surest way of influencing many was to appeal simply to Scripture and apply its texts literally to the conditions existing. It may be that to say that when St. Peter spoke of the King he was referring to Nero and not to Charles I

would have seemed to many rather impious. The safest and surest course was to ignore all that the adversary said and declare boldly that God forbade resistance to Kings everywhere and always. But a perception of this does not imply that the writers themselves did not believe what they said. One may feel sure that at least nearly all of them did believe it.

Some of the Royalist writers whose reliance was chiefly on Scripture did, however, do more than quote St. Paul. Usher himself, in a tract written perhaps as early as 1640, though not published till 1661,[1] said a good deal more than he said in *The Sovereign's Power.*

Even here, however, his main assertion was simply that real authority is derived only from God, in which, though he shows no consciousness of the fact, he agreed with Bridge and other Parliamentarians. It is confusedly asserted that once any one has been invested with divinely given authority, the use of force against him is divinely forbidden. He had evidently read some Bodin and insisted that civil supremacy or *majestas* must reside 'in some certain head'. The King must be *legibus solutus.* Though he is bound by laws he cannot be bound absolutely. 'Where he seeth cause he may abate or totally remit the penalty incurred by the breach of them, dispense with others for the not observing them at all, yea, and generally suspend the execution of them when by experience he shall find the inconveniences to be greater than the profit.' This was to claim more for the King than he himself was claiming in 1642, but no more than was claimed for him in the Hampden judgement and earlier. It is significant that Usher says nothing of a power actually to make law, and his silence on the point implies that he did not attribute such power to the King.

Francis Quarles, a poet and not a clergyman, tells us that he at first sympathized with both parties, since both declared that they fought to maintain law and liberty, religion, and Parliament. But, feeling that he ought to serve one or the other, he turned to the Bible for guidance and found Romans xiii. and other texts and for him that settled the question. He had, in fact, nothing to show for his Royalism but these texts. But he added the pertinent remark that among Parliamentarians

[1] *The Power communicated by God to the Prince and the Obedience required of the subject.* Published in 1661, with a preface by Sanderson.

there were many of different religious sects. Parliament talks of safeguarding true religion, but all sects maintain that their religion is true. Are we to wait for peace till they all agree?[1]

In another tract of that year which can only be regarded as belonging to this series, a clergyman named Edward Symmons expressed a view frequently insisted upon in France, but rarely in England.[2] The heir to a throne, he declared, is, at birth, appointed by God to be King later. His right to succession is absolute: it would be as sacrilegious to set him aside as to depose him when actually King. He is the Lord's Annointed before coronation. It is absurd to talk of separation between his person and his office: his kingship is born with him and is one with himself. His commands as King may, indeed, be disobeyed if contrary to law, but with that disobedience must go a readiness to be punished for it. Monarchy, he added, is the best form of government. It is the most ancient, having a type in every well-ordered household and a resemblance to God's own government of the world. It is also the most consonant with nature, and exists among bees and cranes and other animals. It is strange to find this nonsense as late as 1643. Yet it appears again in the *Jura Majestatis* of Griffith Williams.

The writings of Griffith Williams, Bishop of Ossory, are the most revealing and the most explicit of all those of this series. In all three of the tractates he published during 1643 and 1644, the argument is mainly Biblical. But the writer's conclusions were expressed far more fully and emphatically than by any one else of this group. He went so far towards claiming an unlimited power for the King that though he distinctly declared that in England the King is not an absolute monarch, it is hard to see how he can have reconciled his assertions.

Monarchy, according to Bishop Williams, 'was ordained from the beginning of the world to be observed among all nations and to be continued to the end of the world'.[3] The first form of it was patriarchal; every man was king in his own household. It was abuse of paternal power among many families that led to concentration. Aristocracies and democracies arose later, as the result of tyrannical conduct. All

[1] *The Loyal Convert*, 1643.
[2] *A Loyal Subject's Belief*, May 1643. B.M. E. 103 (6).
[3] *Jura Majestatis*, 1644, p. 3.

authority is derived from God but, since government of some sort is necessary for man, God confers it even on these degenerate forms. Actual sovereignty may be established in any way, even by an unjust conquest. Imprudently, he admitted that if a people revolt and depose its rightful King, the new ruler set up will receive authority from God.[1] God, it seems, always gives authority to whomsoever holds actual power.

But, even though successful rebellion may finally receive God's blessing, there is never any justification for rebellion against a properly constituted monarch. God has absolutely forbidden forcible resistance to authority. Even if the King should seek to compel his subjects to idolatry, resistance must be passive only.[2] Following Calvin closely, Williams admitted that, in some kingdoms there may be special magistrates empowered to resist or depose a King upon breach of expressed conditions. But such a kingdom as this is, he says, not really a monarchy. There is no such provision or arrangement in English law.[3]

Originally, it appears, the authority given by God to Kings was unlimited: from Adam onwards all early kings were absolute monarchs. But in England, as elsewhere, the King's power has limits established by his own grants and promises. He is accountable to God only, but he has bound himself and is bound to rule by the law of the land. It is the King who makes law for England, but he 'has promised the people and obliged himself not to do it without the advice of their Parliament'.[4] All the same he is sole sovereign. 'The consent of the two Houses is but a requisite condition' to the making of law. Yet Williams declared that Parliament derived all its powers from the King, and that if it abuse its powers he would be justified in abolishing it altogether.[5] It is a representative body, but it consists of subjects and represents only subjects. How he reconciled a power to abolish Parliament with an obligation not to make law without its consent is not explained.

The views expressed by Griffith Williams were certainly not typical of Royalist opinion generally. They would only have

[1] *Jura Majestatis*, pp. 17–18.
[2] *Vindiciae Regum*, ch. III. This was written in 1641 but published only in 1643.
[3] *Jura Majestatis*, p. 35.
[4] *The Discovery of Mysteries*, July 1643.
[5] *Vindiciae Regum*, last chapter.

been very partially approved by Ferne and those who took their stand on the law of the constitution. How far those who argued from Biblical texts and Biblical history would have agreed with him it is impossible to be sure. Most of them, it would rather seem, were sure only of the meaning of St. Paul. Nor can Usher's views be said to agree with those of Williams. Only the evident confusion in his mind would seem to have been at all typical.

In studying the writings of Royalists of this time it must always be remembered that the word absolute was still, as in the time of Elizabeth, used in different senses. Few use the word as definitely as did Hunton or even in his sense. Often it seems to be used as equivalent to the vague word 'real'. England, it is asserted, is an 'absolute' that is, a 'real' monarchy. There is no one above the King, no one who can judge him or give him orders, it is he who makes law even though he cannot make it without concurrence, he is therefore a monarch absolute, he alone is the sovereign. This, it seems clear, is how the word was most commonly used. Of this fact the writings of Thomas Morton, Bishop of Durham, the last writer of this series who needs mention here, afford a good illustration.

Of all the writers of this class Morton was, with the exception of Usher, the most individually distinguished. A Fellow of St. John's, Cambridge, he had become a University lecturer in logic, though one would hardly suppose so from his writings. He had been successively Bishop of Chester and of Lichfield before his promotion to the see of Durham in 1632. He was not a Laudian churchman in opinion, but his learning and his character caused him to be respected by the authorities. Hooker and Overall and Casaubon had been among his friends and he had friendly relations with many foreign scholars. In 1642 he was already nearly eighty years old. Twice, for brief periods, he suffered imprisonment by Parliament and later he was, of course, deprived of his see. But there was little against him; he had always been gentle in all his dealings with dissidents. He died in 1659 at the age of ninety-five, 'blessed', says Walton, who knew him, 'with perfect intellectuals and a cheerful heart'.

As an apologist for Royalism, Morton had little to say. His *Christus Dei*, written in 1642 as an answer to Parker, contains

little but what is commonplace and is almost entirely irrelevant to the *Observations*. Political society, it is stated, arises inevitably 'from the common necessity of all mankind'. Its primary end is the glory of God; its secondary end is *salus populi* or the peace and prosperity of all its members. Both these ends involve co-operation and so government. Every man has a divine and natural right to defend himself against violence. This is a gift from God and it enables men to settle for themselves how precisely they shall be governed. 'Even at the very first uniting themselves into a civil society, there is an inherent power in the people to govern themselves.' Parker, he says, is right in saying that God does not favour any particular form of government. He is wrong only in not admitting that the authority of government, whatever be its form, is conferred by God only. God is 'the efficient cause' of all authority. There was very little in this with which Parker had cause to quarrel.

Morton went on to insist upon 'the absoluteness' of monarchy in England. Once the power inherent in a people has been transferred to a King, he becomes an 'absolute' monarch. 'Every absolute King, invested and annointed with a divine power by God himself, through the election of the people to be sole administrator thereof, is in power superior absolutely over the whole commonwealth.' If it be not so, 'he is not an absolute King'. It might be supposed that he was claiming for the King a power unlimited. It is, nevertheless, clear that he was not doing so. 'I speak', he says, 'not of conditional Princes but of absolute kings, as doth the *Observer* also.' But of absolute Kings in the sense of Hunton, Parker says nothing except that they could never have been established except by mere tyrannous force. Morton's absolute King was King absolutely but not, or not necessarily, an absolute monarch able to make law at pleasure.

In *The necessity of Christian Subjection*, published in 1643, Morton expressed a view as to the origin of monarchy that seems hardly consistent with what he had written earlier. We are now told that monarchy had its starting-point in Adam and is the only natural form of government, all others being 'against the course of nature'. But his tract was almost entirely devoted to showing that in no possible case can forcible resistance to the King be justified. Even though the King 'should command

the most unjust, superstitious, idolatrous, profane, or irreligious things that can be imagined', there must be no resistance by force. Passive disobedience, indeed, is in such an extreme case obligatory; but even that is forbidden unless there is no doubt about it. Our rule should be that of St. Augustine: 'Si dubitas, facias.' For all this only the usual scriptural argument was offered. Nothing, it should be observed, was said, one way or another, about disobedience to commands contrary to law. No more than any other of this group of writers did Morton say that the King's power was unlimited; nor is there any reason to suppose that he, or any of them, would have said so.

Chapter III

THE ROYALIST VIEW OF THE CONSTITUTION

As has been remarked already the Royalist writers of these years, with one partial exception, did not attempt formally to present any theory of the State. What they were essentially concerned with was the actual constitution of government in England. Yet study of the writings of those who expressed most fully the ideas represented by the Royalist party shows that they had in common what may fairly be called a political philosophy. The differences of view that appear among them were but minor differences.

The writers in whom that philosophy of Royalism found fullest expression were Henry Ferne and Sir John Spelman, John Bramhall and Dudley Digges. Maxwell stands somewhat apart and will be considered separately. It may conduce to clearness if some particulars concerning these writers individually are given here.

Like so many of the leading writers on both sides, and especially on the Royalist side, Ferne was a clergyman. In 1642 he held the living of Medbourne in Leicestershire. He became, after the Restoration, Master of Trinity, Cambridge, and subsequently, in 1662, Bishop of Chester, dying the same year. No other Royalist writer received so much attention from Parliamentarians. His *Resolving of Conscience*, published in the autumn of 1642, fairly started the controversy over Parker's *Observations*. It was replied to by Bridge, Herle, and Burroughs among others. His *Conscience Satisfied*, of 1643, led to further controversy. *A Reply unto Several Treatises*, in which he criticized Hunton, was published later in that year and was his last contribution to the debate. All these writings were markedly equable in tone and carefully moderate in statement. Some one who knew him told Anthony à Wood that 'his only fault was that he could not be angry'.

Spelman was the eldest son of Sir Henry Spelman, one of our great pioneer antiquarians and historians. Sir John, knighted in 1641, on succeeding to his father's estate in Norfolk,

was also a scholar and seems to have shared his father's tastes. His part in the controversy was an important one, and his writings exhibit power and considerable originality of thought. His premature death, in 1643, was a misfortune for more than his party.

Bramhall had been Strafford's right-hand man in the reform of the Church in Ireland and had been made Bishop of Londonderry in 1634. As a churchman he was of the school of Laud and his high-churchmanship was combined with a remarkable breadth of view. 'He had', says his biographer, 'a great allowance and charity for men of different persuasions.' He declared that he knew no reason why Greeks, Lutherans and Arminians should not be admitted to communion with the Church of England; 'and the Roman Catholics also, if they did not make their errors to be a condition of their communion'. His tolerance does not appear to have extended to Calvinists.

Dudley Digges was a younger son of Sir Dudley, an able and versatile man who had made a mark as merchant adventurer, lawyer, and politician, and became Master of the Rolls. The son, evidently, shared his father's energy and versatility; but like Spelman he died prematurely in 1643, at the age of thirty. The most important of his writings, *The Unlawfulness of Subjects taking up Arms*, was published in 1643 and had great vogue among Royalists. It was, in fact, a sort of compendium of Royalist argumentation. Digges seems to have been essentially a partisan journalist. He shows little regard for consistency: for him any stick was good enough to beat the Palriamentarian dogs. But he was a very clever and vigorous journalist. He has the merit of being the first writer on either side to discover that use could be made of Hobbes for party purposes.

All Royalist thought that was not simply scriptural seems to have started from a definite conception of the legal constitution of government in England. Royalists conceived that constitution to be defined, explicitly or implicitly, in the recognized law and custom of the land. How far, in the past, it had been actually adhered to in practice they felt no need to inquire. But as to its nature there was hardly any disagreement among them, and as to its main features there was none at all. From this conception of the constitution they all argued. They made

of it a base for their attack on the claims and the action of the Houses.

Upon the main and essential question all the leading exponents of Royalism were absolutely agreed. All of them definitely and emphatically declared that the power of the King of England was strictly limited by law. The King, they declared, must be recognized as sole sovereign. It is impossible, they argued, to conceive of bodies that only meet at his summons and can be dismissed at pleasure as sharing in sovereignty. Spelman pointed out that all legal phraseology and customary formulas implied the sovereignty of the King. But though they show traces of the influence of Bodin, their idea of sovereignty was not his. It was still further, of course, from the conception of Hobbes. It is the King, they say, who makes law; but they all distinctly assert that he cannot do so without the concurrence of the Houses of Parliament.

In emphasizing these points, Ferne went so far as to borrow from his adversaries some of their own favourite phraseology. He began by declaring that he had no more sympathy with any who maintain that the King is an 'absolute' monarch than with those who justify active resistance to him. 'I want to take off', he wrote, 'that false imputation laid upon the divines of this kingdom and upon all those who appear for the King in this cause that they endeavour to defend an absolute power in him, and to raise him to an arbitrary way of government: this we are as much against on his part as against resistance on the subject's part. For we may and ought to deny obedience to such commands of the prince as are unlawful by the Law of God, yea, by the established laws of the land. For in these we have his will and consent given upon good advice, and to obey him against the laws were to obey him against himself, his sudden will against his deliberate will.'[1] It is mere 'impudence', says Spelman, to say we Royalists hold 'that the persons and fortunes of all subjects are absolutely at the will and command of the prince, to dispose according to his will and pleasure'.[2]

It is the King's assent to the petition of the Houses of Parliament, declared Ferne, that makes law; but it cannot be made

[1] *The Resolving of Conscience*, sec. I, p. 3.
[2] *Certain Considerations*. Somer's *Tracts*, IV., opening passage.

otherwise. The Houses are so far co-ordinate with the King that 'by a fundamental constitution' there can be no legislation without their concurrence.[1] The power of the Houses was not theirs originally, yet now 'they have it certainly and irrevocably settled by law upon them.'[2] The Houses of Parliament, says Bramhall, propose a change in law, but the King enacts it. There is no 'absolute' power anywhere in England.[3]

There can be no making of law, declared Spelman, except in Parliament and this is 'the great restraint of royal absolutism in our State'. It was not so, he thought, originally; the King was at first simply an absolute monarch. But after a time our Kings began to call in assemblies of Lords and Commons to advise them and, later still, they promised that no law should be made without their consent. Even then they were not bound by anything but their own will, 'till constant custom becoming a law, made that which was at first at their will, become an absolute and inevitable limitation of their power'.[4] Parliament in the full and proper sense of the term may, therefore, nowadays be said to be above the King,[5] since he is bound absolutely by the law it makes. But every Act of Parliament is itself an expression of the King's personal will. He remains supreme 'in everything wherein he is not especially restrained, and the restraint being by the peculiar laws of his kingdom, he can be no further restrained than the known laws thereof expressly manifest.'[6] 'Obedience to the King's command against law is unwarrantable', says Dudley Digges. . . . 'We do our duty in submitting to his legal will, though against his letters or word of mouth, for he hath obliged us so to do, and by his own grant hath restrained his right to recall and abrogate laws, except by advice and consent of both Houses of Parliament.'

Filmer, when he wrote of the anarchy of a limited or mixed monarchy, was flatly contradicting all these early Royalist writers. The fact needs to be emphasized that during the first years of the Civil War there was what looks like general agreement among Royalists that the kingdom of England was

[1] *Conscience Satisfied*, April 1643, p. 6. [2] *A Reply unto several Treatises*, 1643.
[3] *Serpent Salve*, 1643. See vol. III of Bramhall's *Works* in the Library of Anglo-Catholic Theology, p. 396.
[4] *The Case of our Affairs in Law, Religion and other Circumstances*, January 1643, p. 5.
[5] *A View of a Printed Book*, January 1643, p. 7. [6] *The Case of our Affairs*, p. 3.

a limited and what Ferne called a 'mixed' monarchy. All Royalists of that time who expressed in writing any opinion on the matter, conceived it so. All of them were saying the same thing: and it was substantially what the King himself had said in the declarations of 1642. Only on one point of importance, and in only one place, does any disagreement among them appear. 'The laws and customs of the kingdom', says Bramhall, 'are limits and bounds to His Majesty's power.' But though, he added, his action is normally limited by law it cannot be reasonably held to be bound by law absolutely in all cases. He can override and set aside law 'where the exigence of the state is apparent'. Such a prerogative exists, he declared, just because *salus populi* is the supreme end of all government.[1] Bramhall was claiming no more for the King than had been persistently claimed before 1640. Yet, except Usher, no one else went so far. No other Royalist writer so much as suggested that the King had, under any circumstances, a right to override the law. It may be said, without qualification, that it was the absolute rule of law, as made in Parliament and as recognized in the law courts, for which the Royalist party contended.

[1] *Serpent Salve. Works*, vol. III, pp. 339–40.

Chapter IV

ROYALIST CRITICISM OF THE PARLIAMENTARIAN CASE

§ I. THE ORIGIN OF AUTHORITY

PARLIAMENTARIAN theorists, even when they admitted that authority to command obedience as a duty was derived only from God, maintained that all actual power was derived from popular consent or recognition or from a contract formal or implied. No one on either side, indeed, denied that popular consent in some sense is practically necessary to the actual power of government. What the Parliamentarian writers laid stress upon was the voluntary nature of that consent. They represented the practical establishment of authority as the result of a voluntary and deliberate act of the people, whatever form of government were established. On this they were able to base a claim to a right of resistance or rebellion, at least in representative bodies. The Royalists on the other hand, anxious above all to show that no such right existed, insisted on the essentially involuntary, or only very partially voluntary, character of popular consent to the form and powers of established governments. They were not concerned to deny that practically the authority of a government rests on its recognition by the governed. But they insisted that in almost all cases, if not quite in all, that recognition was practically compulsory. Popular acquiescence in the claims of the ruler, they asserted, almost automatically follows the establishment of effective government. They admitted that mere force cannot of itself create right; but they argued that it may, and normally does, create the acquiescence which is consent. 'Conquest', says Ferne, is one of the means by which God translates kingdoms.' The rule of the conqueror may at first be acquiesced in only reluctantly; but if he gives effective protection and keeps order, that unwilling submission passes in course of time into full consent and recognition. 'A long-continued prescription or possession of

sovereignty without opposition', says Bramhall, 'implies a full consent.'[1]

Burroughs had declared that it did not matter what was recorded or unrecorded in history. However governmental authority came actually to be established, the right to govern is derived from consent and cannot exist on any other basis. The Royalist writers appealed to history. In no case or, if ever, only in the rarest cases, they declared, is the popular consent to the claims of rulers simply and completely voluntary. There is never really a free choice. No case of the establishment of a government under a formal contract is known and it is very unlikely that such a thing ever happened. Ferne, apparently, felt a little uncertain about this, but most Royalist writers were inclined to assert that no such thing could possibly happen. Men, says Spelman, were never at any time free from subjection of some kind. Man is not born free, he is born into subjection, if only to his parents. The notion that government was deliberately set up by a mob of free people is absurd.

Different views concerning the origin of government were expressed by Royalist writers, but their differences in no way affected their criticism of the theories of the opposition. Many Royalist writers asserted that political authority was ultimately derived from the natural authority invested by God in all heads of households or families. Monarchy, therefore, they declared was the earliest form of government, and is the only form that can be described as natural and conceived as arising inevitably. When, says, Ferne people began to choose Kings for themselves, it was 'a kind of defection from that natural way of the descent of governing kingly power by a paternal right'. Other forms of government were afterwards adopted, but it was 'late ere any popular rule, aristocratical or democratical, appeared'.[2] Monarchy derives from the divinely ordained authority of fatherhood; all other forms are mere inventions of man.

But Royalists were not in any way tied to a belief in this 'patriarchal' theory of the origin of government. Its adoption was in no way necessary to Royalist argument. So far as they did adopt it, it was chiefly because they appealed to history and saw it as an historical fact in the Bible. Many Royalist

[1] *Serpent Salve. Works*, vol. III, p. 319. [2] *Conscience Satisfied*, pp. 8–9.

writers say simply that government arose inevitably from the common needs of men and the necessity of organized co-operation for security and prosperity. One solitary writer, greatly daring, adopted, for the use of Royalists, a form of contract theory, lifted straight from the *De Cive* of Hobbes.

In the days, says Dudley Digges, when there was no government among men save the rule of parents over children, we all possessed a natural freedom, consisting in 'an unlimited power to use our abilities according as will did prompt'.[1] Experience, however, quickly demonstrated to men that 'it was not so delightful to do whatever they liked as it was miserable to suffer as much as it pleased others to inflict'. Even the strongest lived, then, in continual fear; 'for whilst every one had right to all, nobody could with safety make use of anything'.

It was evidently absurd that men should be 'forced daily to hazard the loss of their lives out of a natural desire of conserving them'. Such a state of things 'right reason abhorred'; and men found a way of escape from it. 'There being no way to effect this naturally, they reduce themselves into a civil unity, by placing over them one head and by making his will the will of them all, to the end there might be no gap left open by schism to return to their former confusion.' The agreement did not involve a transference of the power of each individual to the ruler, for such a transference is simply impossible. It involved only 'a consent and mutual obligation . . . of not using their natural power but only as law shall require, that is, of not resisting that body in which the supreme power is placed'. Whether the Sovereign thus created be a King or a designated group the case is not altered. However the Sovereign be constituted, the agreement 'signifies the giving up of every man's particular power into his disposal, so that he may be enabled to force those who are unwilling . . . to be obedient for the common good.' So it comes about that 'in acquittal for our submission of our private strength, we are secured by the united power of all and the whole kingdom becomes our guard.'

Dudley speaks of the first section of his treatise as an introduction, explaining 'to the view and examination of all that

[1] *The unlawfulness of Subjects taking up Arms*, 1643, p. 3. The quotations that follow are from pp. 3–4.

demand real satisfaction, the foundation upon which rule and subjection are built'. He shows no sign of having really understood what he found in the *De Cive*. In any case, he had adopted from it only so much as suited his purpose; and, consequently, the view he presented is not really intelligible. But his object was to make out that, if political society is founded on any kind of contract, it is on one which creates a Sovereign to whom there can be no right of resistance. He had given the opposition something new to answer; and that sufficed. Much of what he says later is quite inconsistent with the Hobbesian conception he presented.

Inconsistency between Royalist views of the origin of government did nothing to weaken the case for Royalism. Practically all Royalist writers agreed that all established forms of government alike possess real authority divinely conferred. That being so, it mattered little or nothing how they had actually originated, so long as the mode of their establishment did not of itself involve a right of rebellion. No one but Griffith Williams went even so far as to say that God had intended all mankind to be governed monarchically for ever. God, it was usually declared, is indifferent to forms of government. 'The imputation is causeless', wrote Ferne, 'which the pleaders on the other side do heedlessly lay upon the divines, as if we cried up monarchy and that only government to be *jure divino*.'[1] He even went so far as to suggest that Royalist divines who, preaching before the King, did make that claim for monarchy, were insincere in doing so. 'Let them bear their burden that speak not their consciences at Court.' Real authority, says Bramhall, is given as fully to an aristocracy or democracy as to a King. Dudley Digges argued, on grounds of expediency merely, that monarchy is practically the best form of government; but he fully admitted that men may rightfully set up any form that suits them. Nor, of course, did any Royalist writer of this time deny that sovereign power might be conditioned and limited. 'Government', says Ferne, 'may receive a change and qualification by consent of King and people from more absolute to mixed and such a constitution is a fundamental because all other laws are built upon it.' That, they all thought, was what had happened in England.

[1] *The Resolving of Conscience*, sec. 3, p. 17.

All this argumentation about the origin of government and of political authority, superficial as it was on both sides, was far from being as practically pointless as it may seem. Supporters of Parliament were trying to find a basis for the claim of the Houses rightfully to take arms against the King. They did so by adopting, more or less fully, a theory on which the Houses of Parliament represented an ultimately sovereign people from whose deliberate will all authority was practically derived. The Royalists were trying to cut the ground from under their feet, by showing that history does not support any theory of the derivation of authority from the people under any kind of deliberate grant or contract. From the Royalist point of view it mattered not at all how individual writers put the case, so long as the Parliamentarian theory was shown to be without foundation in fact.

§ 2. THE POSITIVE CLAIMS OF PARLIAMENT

Just as in considering the origin of political authority, Royalist writers appealed to what they thought were the facts of history, so when they came to criticize the positive claims of the Houses they appealed to law. They started, it may be said, with the assertion that it is contrary to all law, custom, and tradition that the Houses should call themselves 'Parliament'. The High Court of Parliament consists of King, Lords, and Commons and it alone possesses legislative power. In calling themselves Parliament the Houses beg the whole question and claim full sovereignty for themselves alone. What 'in the name of goodness', Spelman asked, do people mean by talking about a power in Parliament without or against the King?[1] There can be no such thing. The Houses by themselves have no power at all: they can legally do nothing that concerns the subject in general. They can no more make law by themselves, says Digges, than can the King and the House of Lords acting together. The plea that legislative power falls to the Houses in the absence of the King is absurd. Ferne and Digges both pointed out that the royal assent to or refusal of proposals made by the Houses can be signified as well from York or Oxford as from London. No

[1] *A View of a Printed Book*, p. 20.

more can be required. 'Presence or absence', says Ferne, 'is nothing; his power of denying is all.' 'What one thing', Digges asked, 'hath His Majesty denied them, which he had not full right to do?'

It is not true, Ferne declared, that it was the King who began the war. The King is on the defensive and he is defending only his legal rights: his right to control of military forces, his right to appoint his own ministers and his right to refuse assent to Bills. If these be taken from him nothing is left of the monarchy or of our ancient constitution. These assertions are made by almost all the Royalist writers who in any way criticize the claims made for 'Parliament'. The Houses, declared an anonymous writer, have assumed to themselves powers greater than were ever claimed by the King. Their claims are without any basis in law and amount to a claim to arbitrary power. 'If they sit while they list and pass what they list', they can do anything they please. 'We have no law left but what serves their turn.'[1]

It was absurd, declared the Royalist writers, to say that the Houses were not claiming to make law of their own authority merely. Ferne and Bramhall both argued that the claim to issue binding ordinances was alone enough to show that they were doing so. Their disclaimers cannot be taken seriously. It is useless, Ferne argued, to say that such ordinances have force of law only *pro tempore*, if this means for so long as the Houses themselves consider necessary. Similarly, it is absurd to talk about 'occasional supply' if the Houses themselves can make the occasion when they please.[2] 'Give to any person or society', wrote Bramhall, 'a legislative power without the King in case of necessity . . . and it is more than probable the necessity will not determine till they have their own desires.'[3] The issue of ordinances having force of law is an assumption of legislative power whatever you call it. The Houses, says Digges, have no more right to issue such ordinances than they have to coin money or declare war.

There might be a doubt as to what was implied in the issue of ordinances: there could be none, all Royalist writers insisted, that the declaratory power claimed by the Houses was

[1] *A Vindication of the King*, September 1642. B.M. E. 118 (3), p. 4.
[2] *Conscience Satisfied.* [3] *Serpent Salve. Works*, III, p. 371.

equivalent to a power of making law. In the minds of the leading Royalist writers there was no confusion between the judgements of a court and legislative action. If, Spelman pointed out, law be declared by Act of Parliament, that is not a judgement but a legislative enactment.[1] The claim that a judgement of the Houses can in any way alter recognized law has no foundation whatever. To claim that their judgement as to what is law is binding on every one and yet to say that they are not claiming legislative power is mere self-contradictory nonsense.

The attempt to derive these extraordinary powers, of which the law knows nothing, from the representative character of the Houses, involved, Royalist writers declared, groundless and absurd assumptions. Talk about the Houses expressing by their votes the judgement and will of the whole kingdom is, says Bramhall, mere nonsense. It rests on nothing but a more or less convenient legal fiction. No one expressed this view more strongly than the anonymous author of a rather remarkable tract entitled *Certain Material Considerations*. It is, he declared, the merest fiction that majority votes in the Houses of Parliament express the judgement of the kingdom. Subject as they are to faction and passion, such votes do not necessarily express even the considered judgement of the Houses themselves. An Act of Parliament, which involves the King's assent, creates obligation for all. But even an Act of Parliament does not or need not express the judgement of the whole people. I am bound to obey it; but it may well be that I think it unjust or mischievous. Nor is my judgement necessarily expressed by the majority of votes in my own constituency or by the people it elects for Parliament, 'whom perhaps I think very unfit and who were chosen against my will'. To say therefore that votes in Parliament express the judgement of everybody, is simply false. 'It is impossible and against reason and nature that an understanding man's judgement . . . should be led captive merely by the odds of two or three voices.'[2] The writer might well have said more than that. He does not quite say that it is absurd to make claims for the House of Commons simply on the ground of its representative character, because representation is a fiction; but he came very near saying so. But

[1] *The Case of our Affairs*, p. 4.
[2] *Certain Material Considerations*, February 1643. B.M. E. 246 (4), p. 5.

what he says with unusual distinctness is only what is implied by all Royalist writers who dealt with the matter.

Dudley Digges, indeed, went in one direction even farther. 'The interests of the major part in the House of Commons', he wrote, 'may be opposite to the good of the kingdom in general.' And he added a warning which, at the moment, there must have seemed little reason to take seriously. 'It is very easy', he declared, 'to conceive that the major part of the Lower House may be very mean men, chosen to make more profitable laws for the poorer sort and to keep the gentry under, by laying subsidies and all burdens of the commonwealth upon them. . . . Such a choice is very possible, neither is it improbable if Parliaments shall be governed by these new principles. For the reason why such an election was never yet made is this: such a power was never heretofore challenged as could enable them to go through with any such design.'[1] The veto of the Lords, he pointed out, can be got rid of on the same grounds as that of the King. So, finally, 'the disposal of all would be put into their hands whose interests are most disjointed from the public tranquillity, as enjoying least by the present establishment in this State'.[2] Digges apparently imagined that an ultimate sovereignty of the people having been asserted, Parliaments governed by 'these new principles' would some day seek to make principle and practice consistent.

Not less absurd, declared the Royalist critics, is the argument from fundamental law. It is fundamental law, says Ferne, that we shall be governed by King, Lords and Commons, and not by the Lords and Commons alone. Any other fundamental laws that may exist, must, he argued, at least be consistent with the recognized law of the constitution; and that the claims made for the Houses certainly are not. It may here be observed that while most of the Royalist argument on grounds of law is conclusive and unanswerable as far as it goes, doubt arises at this point. If by fundamental law was meant only the principles logically implied in the positive law of the constitution, it was of course true that the two must be consistent. But if fundamental law signified a law of nature, or principles that ought to govern all human societies, then the actual law might be quite inconsistent with those principles. If that were so, it

[1] *The Unlawfulness*, etc., pp. 139–40. [2] Ibid., p. 142.

would follow that the actual law needed radical alteration. That, it might be said, was just what the Parliamentarians were indistinctly and confusedly asserting.

The vague talk about defending liberty in which Parliamentarians indulge is, Royalist writers declared, either irrelevant or nonsensical. Liberty, they argued, is inseparable from law; and to claim more liberty than law allows of is an attack on liberty. A man's rights in civil society, declared Spelman, are his legal rights and no more.[1] 'It is very strange', wrote Dudley Digges, 'that men should generally fall in love with a bare sound . . . which, duly examined, will be found to signify nothing. They cannot mean by it a looseness from all laws. . . . The true debate among men is not whether they shall admit of bonds, but who shall impose them . . . and it is commonly called liberty to serve more masters.' Actually, it is subjection that creates liberty. 'The restraint of our freedom is that which is most valuable amongst the benefits of government. Though we naturally delight in a full and absolute liberty, yet the love of it is over-balanced with fears; every one could wish to retain itself, but not upon this condition, that all others should enjoy the same freedom. Because as the contemplation of our own liberty is pleasant . . . so there is a more sad consideration, arising from the thoughts of others' freedom to make us suffer.'[2]

Even if a right to rebel could be shown to exist in the Houses of Parliament, declared the Royalists, its exercise would not be justified in the present circumstances. The King, says an anonymous writer, was at one time misled and he wronged his people in the matter of ship-money and in other ways. But he has discovered his mistake and has made all possible amends and granted everything that could reasonably be asked of him. There should now be no doubt of the honesty of his declared intentions.[3] Parliament, says another, has done some fine and necessary work, but it has made a bad mistake in not trusting the King's declarations.[4] Rebellion, Spelman declared, may possibly be justified in extreme cases but certainly not in this case. Even admitting the truth of all that the Parliamentarians say, the remedy they have tried is worse than the

[1] *Certain Considerations.*
[2] *The Unlawfulness*, p. 29.
[3] *A Vindication of the King*, September 1642.
[4] *A Whisper in the Eare*, 1642.

disease. 'This kingdom', wrote Bramhall, 'hath suffered more in the trial of this remedy in one year than it hath done under all the kings and queens of England since the union of the two roses.'[1]

'After you had obtained a perfect confirmation of all your ancient rights and liberties', wrote Dudley Digges, 'with a gracious enlargement of them by new grants . . . you are frighted with the possibility of a relapse. . . . What hath been the success? Are you not extremely sick of your remedy? . . . Your grievances are highly improved: Magna Carta and the Petition of Right are now malignant: they speak not the sense of the House, but take part with the King. To quote our good and ancient laws is interpreted a breach of Privileges of Parliament: appeals are made to the people; a ready way to a universal confusion.'[2]

Royalist criticism erred perhaps in failing to meet the assertion implied in the attitude of the Parliamentarians, that what was needed was a radical change in the law of the constitution. They were too easily content merely to point out the revolutionary character of the changes proposed. But it is in any case clear that behind all their arguments was fear of that universal confusion to which Digges pointed. They feared a break-down of the whole social system, of all law and of all tradition, and they feared almost equally the establishment of some form of absolutism. The powers claimed by the Houses, says Bramhall, would be more tolerable in a monarch than in them. Much Royalist writing was gloomily prophetic. If Parliament is victorious, declared Spelman, it must either restore the King, with such guarantees of legal liberties as His Majesty has already conceded, or is willing to concede, or else 'they must take the sovereign power into their own hand and leave him no more, at most, than the contemptible name of King. Then shall we be governed by the absolute, arbitrary and tyrannical sway of their votes.' In the former case the war will have been worse than useless. In the latter case the Houses, to secure their position, will have to 'keep the kingdom under perpetual garrisons'; and civil war is likely to be chronic till the King is restored to his rights.[3] As political forecasts go, this was certainly a good one.

[1] *Serpent Salve*. *Works*, III, p. 355. [2] *The Unlawfulness*, sec. 3, pp. 80–1.
[3] *The Case of our Affairs*, p. 25.

Bridge and others on the side of Parliament had declared emphatically that no claim was made to power to depose the King. 'What some of you have contended for all this while, the Lord knows, that knows your hearts', Ferne answered: 'yet this we know, the same principles will carry you so far.' And he ended his *Conscience Satisfied* by asking what they really thought they were doing.

Chapter V

MAXWELL: *SACRO-SANCTA REGUM MAJESTAS*

JOHN MAXWELL, a Scotsman born in 1590 and made Bishop of Ross in 1633, took a leading part in drawing up the New Service Book for Scotland that was issued in 1637. Driven from Scotland, he went to Ireland in 1640, and narrowly escaped being killed in the rising of 1641. In 1644 he joined the King at Oxford and in 1645 was made Archbishop of Tuam. His *Regum Majestas* was published at Oxford in 1644.

Maxwell, it may be said, was less of a mere controversialist and more of a philosopher than any other Royalist writer of the first years of war. He reproduced, indeed, many of the points made by all the leading writers on his side, though, in 1644, that was hardly worth doing. But, rather confusedly, he presented in addition a view that was unlike that of any one else. It is, however, by no means easy always to be sure of what he meant. He did not succeed in making his thought quite clear. There is a danger of reading into him more than he meant to say; and I may have done so. Yet the impression his book leaves is tolerably distinct and is certainly distinctive.

It is inconceivable, Maxwell asserted, that the people can in any sense be the real source of political authority, because the people can, strictly speaking, confer nothing at all. To say that power is inherent in the people and that they confer it, conditionally or otherwise, on a sovereign is really nonsense. A people is a mere collection of individuals. Each of those individuals possesses certain actual powers and, it may be admitted, has certain rights. But he cannot transfer to any one either his powers or his rights: it is simply impossible that he should give them up. Whatever he may wish or promise to do, they remain, necessarily, his own.

Furthermore, no one has any right whatever to demand obedience as a duty from any one else. No one has a right to rule any one but his own children, for so long as they are children. Collectively, the people can have no other rights than they possess individually. They cannot possibly confer what

none of them possesses. Nothing whatever can be conferred by the people as a body which each individual could not himself confer.

'There can no other power be conceived to be inherent in the community', says Maxwell, 'but only a capacity to be governed by one or more. This capacity . . . is attended with a natural, necessary and vehement desire and inclination to submit to government.'[1] That desire is not strictly and simply voluntary: it arises inevitably from the necessity of government in spite of the fact that 'every individual person . . . hath a natural averseness and repugnancy to submit to any'. Men 'see and feel that without government none can enjoy . . . safety; and this forceth that natural repugnancy which is in every one, to give way to that universal, natural and necessary propension . . . to government'.[2] All that the individual, or the community, can do is to subject itself to a ruler or rulers. In doing so it confers nothing; it merely promises obedience. Its collective power is transferred to the sovereign only in the sense that obedience makes that power available. Nothing is given up. The individual, it might be said, gives up the right of righting his own wrongs and being judge in his own cause. But he does not really do that and could not do it. He retains his right, subject to obedience to the sovereign.

But the problem cannot thus be solved. A mere promise of obedience, a mere desire for and need of government, creates no real authority. The individual cannot bind himself. Whatever he promises, he remains free to change his mind and cancel his promise. He cannot create a right in the sovereign to demand his obedience as a duty. And yet, unless the sovereign really has this right, there is no security for ruler or subject. Unless this right exists political authority is based on nothing but an imperfect sense of need. How then is real political authority ever to be established among men? The case seems almost hopeless. Maxwell, it seems to me, had come nearer to apprehending the essential difficulty of the problem than any one but Hobbes.

But Maxwell's originality as a thinker began and ended with

[1] *Regum Majestas*, ch. VIII, p. 91. This is the important chapter of the book.
[2] Ibid.

his statement of the problem. The solution he propounded, superficially simple and of course utterly unlike that of Hobbes, was entirely unoriginal. Real authority is necessary for ordered society and man cannot possibly confer or create it. But what is impossible for men is possible for God. It is not imaginable that God would fail to give what is needed to save men from anarchy. 'Can we then dream . . . that God did leave man without this means of subsistence?'[1] God, it must be conceived, confers on every recognized sovereign the right to demand obedience as an absolute duty.

How precisely that sovereign was constituted matters not at all. He may have been first recognized as a common father, the head of a great family; he may have been established by violence or conquest; he may have been originally designated by some kind of popular election. The fundamental fact is always the same: on the one side man's need and desire to be governed, on the other God's gift of real authority to the ruler. Nor does it in the least matter in what form the sovereignty is established. Aristocracy and democracy are practically inferior forms of government, but God blesses all alike with his gift of authority. So it comes about that whoever be the sovereign, submission is a duty and rebellion forbidden absolutely. 'It is high rebellion against God to oppose or resist the King.'[2]

Though he repeated much that had been said by Ferne and Spelman, Maxwell really had no more than this to say. But it must be added, that like all the other Royalist writers, he claimed for the King no despotic power. The King, he declared, is bound to respect the liberty and the property of his subjects according to the law of the land.[3]

[1] *Regum Majestas*, ch. VIII. [2] Ibid., p. 190. [3] Ibid., p. 171.

Chapter VI

THE DOCTRINE OF NON-RESISTANCE

ALL Royalist argument and criticism of Parliamentarian pretensions were designed to lead up to a definite and simple conclusion. Royalist writers did indeed argue that even on their own assumptions, the Houses of Parliament were not justified in rebellion in the actual circumstances. But to show merely that, was evidently insufficient to meet the danger. They were bound to go farther. The main contention of Royalism was that in no circumstances can armed resistance to a national sovereign be justified.

But in the term Sovereign there was ambiguity. The Royalists asserted that sovereignty lay solely with the King, none sharing it with him. For some time past, however, it had been more or less definitely recognized that the most essential feature and mark of sovereignty was the power to make law. Recognizing that themselves, Royalist writers felt bound to maintain that it was the King who made law for England. He enacted it, they said, on the petition of the Houses: it was solely his assent that made a Bill into law. Yet, at the same time, they fully admitted that law could only be made in Parliament with the concurrence of the Houses. That was really an admission that it was not the King who made it. To say that the King made law was on their own showing little better than a quibble. He could not be said to make law except in a sense merely technical or conventional. It did not matter how they used the ambiguous term Sovereign. They admitted that the King, whether you call him the Sovereign or not, was bound by law that he did not and could not make of his own authority simply.

The insistence of the apologists for Royalism on the sole sovereignty of the King created for them serious difficulties. Had they been prepared to maintain that the King was an absolute monarch, those difficulties would have disappeared. That fact is one reason why, later on, a tendency to claim pure absolutism for the King did actually appear. But the Royalists

of 1643 show no such tendency; their conception of the law of the constitution made that solution of the difficulty impossible for them. They admitted that the King could give unlawful orders, and that disobedience to such orders was always justified and might be a duty. They had, therefore, to show that, though the King could transgress the legal limits of his power, and though in such a case disobedience might be obligatory, no steps could be taken forcibly to compel him to respect the law that bound him. They had also to show that the lack of a right to forcible resistance did not make the King practically an absolute monarch. Why, if the King rebelled against the limitations of his power, that is, against the constitution of the State, should not his rebellion be suppressed by force, like any other? To that question no really satisfying answer could be given. The Royalist apologists entangled themselves, quite unnecessarily, in what amounted to a self-contradiction.

The whole difficulty could have been avoided by an admission that national sovereignty in England lay not with the King only, but with the King, Lords and Commons in Parliament. There was no need to recognize in the King in Parliament an authority unlimited absolutely. Without danger and almost without contradiction, it could have been declared that all legislative power is limited by laws of God and Nature. But, as far as *lex humana* went, there was a growing recognition that the power of Parliament was unlimited. The Royalists themselves recognized the fact. Actually, though they did not admit it, they were recognizing that it was not the King solely, but the High Court of Parliament that was sovereign in the sense of Bodin. They had but to argue that no right of rebellion against the real national sovereign could be recognized as existing and their case would have appeared far stronger than actually they made it appear.

I incline to think that the Royalist refusal to recognize in Parliament a sovereign body, was partly due to a reluctance to admit that unlimited power existed anywhere. But it seems that it was mainly due to a failure to see their way to asserting that the Houses of Parliament were in rebellion against Parliament itself. That assertion would have sounded strange and might to many have seemed unintelligible. Yet

all Royalist arguments went to show that that was actually the fact. The Royalists asserted that the Houses were attempting by force to compel the King to surrender to them his legal rights and his sovereignty itself, or his share in sovereignty. They were doing what Strafford had been accused of doing; they were endeavouring to subvert the constitution by engrossing all power to themselves. If that were really so, it could fairly and accurately be said that they were rebelling against the High Court of Parliament. For two of the constituent parts of the sovereign body to attempt by force of arms to nullify the action of the third part, and assume to themselves his share of sovereignty, was just what Pym had declared to be the highest kind of treason. By their insistence that the King was sole sovereign, the Royalist writers simply weakened a strong case and gave an air of unreality to their arguments.

Yet, on the other hand, it may fairly be said that the force of the Royalist argument for non-resistance was weakened only formally by the manner in which they put their case. Fundamentally, what the Royalists maintained was that, wherever national sovereignty may lie, rebellion against it is never justified, and that an attempt to upset its balance or alter its form by force is always a crime against society. If we disregard their unnecessary insistence on the King's personal sovereignty, which on their own showing was but conventional, it must then be admitted that their case was a very strong one, if not entirely unanswerable.

None of the leading Royalist writers refrained altogether from that appeal to texts of Scripture which for many others was the sole resource. Considering the importance attached by their adversaries to what they found in the Bible, it would have been foolish to refrain. Ferne laid stress on the usual Scriptural arguments to show the wickedness of rebellion against the Lord's Annointed. Digges and Maxwell elaborated them at length. Nevertheless, the Royalist case for non-resistance was really quite independent of St. Peter and St. Paul.

Political society, Sir John Spelman declared, is constituted and maintained by an obligation upon every member of the community to obey the sovereign, in whomsoever sovereignty may be placed. 'What subject soever', he wrote, 'would find

the true rule . . . of his obedience, must in the first place look what the State is wherein he lives, and in whom the sovereignty is, to which his obedience . . . is bound.'[1] In the case of a 'sovereign' whose powers are limited by law, the obligation is not, indeed, absolute. Unlawful commands may and should be disobeyed: it is in fact, strictly speaking, unlawful to obey unlawful commands. The distinction, says Ferne, between the King's merely personal orders and orders given in his legal capacity, is valid to a point. But when forcible resistance is resorted to, the distinction breaks down. It is impossible forcibly to resist the sovereign without attacking his sovereignty; and to attack sovereignty is to attack that which holds society together and on which all order depends. Armed resistance 'does immediately strike at that order which is the life of a commonwealth'.[2]

If there is ever to be resistance to the Sovereign, Ferne declared, it must be agreed upon 'by the general and unanimous consent of the whole State'.[3] He suggested, though he did not believe, that if by 'the consent and judgement of the whole kingdom', the Sovereign has become a tyrant, rebellion might be conceived as justified. But such a case is extremely unlikely ever to occur and certainly it is not our case at present. Practically the people is never unanimous. If there is to be recognized any real right of rebellion, it must be recognized as belonging to every man individually and so, necessarily, to every body or group of men. If any right of rebellion exists, then to every man must be conceded the right of judging when rebellion is justified. That involves that rebellion is justified for any cause and on any grounds.

If, argued the Royalists, abuse of power or tyrannical government be held of itself to justify rebellion, then any exercise of power may be held to justify it. It is impossible to draw any exact line between good government and bad or tyrannical government. A right to rebel on the ground of abuse of power is practically equivalent to a right in every one to rebel against any government of which he disapproves. Rebellion will be justified in every one who dislikes the actions or the determinations of the Sovereign. Good government

[1] *The Case of our Affairs*, p. 1. [2] *The Resolving of Conscience*, p. 8.
[3] Ibid., p. 34.

will then be as likely as bad to encounter rebellion, since what one man thinks good another conceives as bad. Those, says Spelman, who maintain the right of resistance grant that they may not disobey lawful commands, 'but then they themselves will be the judges what commands are lawful and what not . . . so they make obedience arbitrary and government at the discretion of the subject'.[1]

To say that it is for the Houses of Parliament to decide when abuse of power justifies rebellion and that, by reason of their representative character, it is only to them that a right of rebellion really belongs, is an absurdity. It means that rebellion may be justified by a bare majority vote in the Houses, however small the majority. It means that bodies who represent, in any sense, only a small part of the nation may raise rebellion on the strength of their own feelings or opinions. Why should bodies nominally, and more or less fictitiously, 'representative' have any such right, while the people they claim to represent have none? The reasons given for asserting a right of rebellion in the Houses, prove equally, if they prove anything, a right of rebellion against the Houses. If the Houses, says Ferne, organize armed resistance on the ground that the King has failed in his trust, 'then may the multitude, upon the like failing of their representatives . . . take the power to themselves'. A right to rebel if it exist at all, can in no way be restricted. It may well be that if the Houses are victors in the present conflict, they, in their turn, will be overthrown on their own principles by armed rebellion. The conclusion is clear. Recognition of a right of rebellion anywhere not only tends to produce civil war, which is the worst of evils, but tends to the overthrow of the rule of law and the destruction of all order. To resist by force the power that makes law is to strike at the root of order, and the means to maintain it. The only way to security is to admit that no such right exists.

Yet more disastrous than the claim to rebel against abuse of power by the Sovereign, is the pretension that force may rightfully be used to establish an improved form of government. If this be allowed of, no State can for a moment be secure. This claim, which the Houses are actually making, disclaim

[1] *Certain Considerations.* Somer's *Tracts*, IV, p. 325.

it as they may, cuts at the roots of all possible constitutions of government and justifies rebellion by any group of malcontents. It is based, too, on mere illusion. Even if it were ideally true, says Digges, that the form of government could be changed for the better, it is not practically so in any settled State. 'The certain miseries of a civil war and the great difficulties of setting it together when it is torn into so many pieces, will be above any hopes they can reasonably propose to themselves.'[1] Armed rebellion for the purpose of establishing a better frame of government is likely to result in something very different from that which it was intended to set up. If no one precisely says this, all Royalist argument implies a perception of the fact.

Equally dangerous, declared the Royalist writers, would be an admission that rebellion can be justified for the cause of religion, or by desire for a religious reformation. God commands obedience, says Spelman, and 'for men to do God a good office against his declared will, is to be God's good masters'.[2] If, he adds, you rebel on such grounds you must be demonstrably right or you are wrong. And who is it that can claim to be demonstrably right? All the Royalist apologists exhibit a point of view as definitely Erastian as that of the House of Commons itself. Strict subordination of the Church to the civil sovereign, says Maxwell, is absolutely necessary. In no other way can civil sovereignty be maintained. Whoever rules the soul must rule the body also, and a national Church independent of the civil sovereign will rule the State. That, both he and Bramhall incidentally pointed out, was precisely the consummation desired by Presbyterians. Ferne wrote contemptuously of the assertion that the King desired to introduce Popery. He suggested that it was a mere pretext: every one knew that the King had no such intention. In any case, declared Hammond,[3] a claim of a right to rebel on the ground that the Sovereign promotes false religion, opens the door to every kind of false profession. No one can be sure of the sincerity of such pretensions. Hunton had said precisely the same thing.

The pretence that the Houses of Parliament can by majority votes determine what is true religion is, the Royalists declared,

[1] *The Unlawfulness*, etc., p. 31.
[2] *Certain Considerations*. Somer's *Tracts*, IV, p. 320.
[3] *Upon Resisting the Lawful Magistrate upon Colour of Religion*, May 1643.

an absurdity. From what, they asked, is this claim derived? It was pointed out that Parliamentarians did not agree among themselves about religion. The Houses, it was frequently declared, encourage and obtain support from all manner of sects, who agree in nothing but a desire to destroy the Church as by law established. They may be able to destroy the Church, but they will never be able to establish anything in its place. It is nothing less than ridiculous to say that the religious opinions of members of Parliament can justify rebellion. Their religious opinions are irrelevant, and the claim to foist them upon other people by force tends to the subversion of all religion and of all order in the Church as in the State. The rule of law will give place to arbitrary government, against which rebellion will be chronic.

In answer to all this, the champions of Parliament declared that it was mere self-contradiction to say that the King's power is limited by law, and yet that force may not be used against him. The legal limitations on his action are in that case, merely theoretic and practically fictitious. If in no case may abuse of his power be met by armed resistance, the King, for all practical purposes, is an absolute monarch. Of all Parliamentarian counter-attacks this was the most difficult to meet: and indeed no really satisfactory answer was possible. It was of little use to say, as Ferne said, that 'arbitrary and limited power is distinguished by the restraint which the law or constitution of government casts upon the governing power; and not by the abuse of that power'. If abuse of power could not be restrained by force, how could it really be restrained?

The Royalist answer to this contention, logically complete, was nevertheless unsatisfying. It is not true, declared Ferne and Spelman, that even though forcible resistance is forbidden, we have no effective means of resisting abuse of power by the King. Refusal of supply and refusal of obedience provide means fully sufficient. There can be no absolute security against misgovernment in any commonwealth, says Ferne, but our constitution provides sufficient safeguards against tyranny. Refusal of obedience to unlawful commands is positively obligatory, at least when the command is of serious import. If that refusal were general the King would be left helpless. If he desired to levy money unlawfully he would have to levy

it himself. No one could be arrested for disobedience and no court could uphold his action.

It was undeniably true that if unlawful orders were met by general refusal to obey them, the King would be left without any means of enforcement. But the answer assumed a general agreement as to what orders were unlawful; and actually no such agreement existed. It ignored, too, the fact that the King, with his power of rewarding unscrupulous service, was likely always to be able to secure agents willing to obey his unlawful orders, and to back them, if necessary, with armed force. It ignored, in fact, what was essential in the situation. The Royalists had created a difficulty for themselves which they could not satisfactorily meet.

CONCLUSION

If, after all the argument, it still remained uncertain what the war was about, that was not the fault of the Royalists. They had tried to define the issues which, on the other side, were left indefinite. They had tried to show, one might say that they had shown, that whatever Parliamentarians might say, the aims of the Houses could only be revolutionary. They argued that the claims made by and for the Houses showed that they must be aiming at establishing full sovereignty in themselves alone, and reducing the King to a nullity or a figurehead merely. But only a few of the Parliamentarian writers would admit as much. The Houses themselves denied that they were claiming legislative power. Prynne argued that they were fighting to revive an ancient constitution that had been half-ruined by royal encroachments. The discordant utterances of Parliamentarians made things difficult for their critics. It was impossible to pin them down to anything. Well might Ferne declare that God alone knew what they were driving at.

But at least the Royalist writers did succeed in laying down the lines upon which a future settlement was possible. The Royalists were not defeated. Military success was irrelevant, as it was bound to be, and resulted only in bringing about a position that proved intolerable. It was the constitution as Ferne and Spelman conceived it that was established at the Restoration. Its subsequent break-down and the establishment of Whig oligarchic government can hardly be regarded as even indirectly a result of the Civil War.

By 1644 things had gone too far to allow of continuance of controversy on the earlier lines. From most Parliamentarian points of view the contentions of the Royalists were no longer worth answering. The battle of Marston Moor and the consequent capture of York were the turning-point in the fighting. When Parliament out of the existing material, and by means of its command of money, had created a real standing army, the war would be practically over. Already in 1644 the Parliamentarian party showed signs of splitting up; and henceforward,

for many years, controversy was to be mainly between its various sections. The dismal prognostications of Royalist writers were already in a way to be fulfilled. Already it had begun to be likely that power would pass from Parliament into the hands of military chiefs. Pym was dead and a new star was rising. Before long the main question would be how stable government could ever again be established. Parliament itself foundered in the welter. But the confusion, if it produced little else of value, produced at least a vast ferment of thought which took many different directions, and cannot have been without value for the future. It is with that ferment of thought that I propose to deal in the next volume.

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